75-1184

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. , Misc.

PEGGY J. CONNOR, HENRY J. KIRKSEY, ET AL.,
Petitioners,

v.

HONORABLE J. P. COLEMAN, United States Circuit Judge, HONORABLE DAN M. RUSSELL, JR., United States District Judge, HONORABLE HAROLD COX, United States District Judge, and the UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI,
Respondents.

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS, PETITION FOR WRIT OF MANDAMUS, AND BRIEF IN SUPPORT THEREOF

FRANK R. PARKER
HERMAN WILSON
Lawyers' Committee for
Civil Rights Under Law
233 North Farish Street
Jackson, Mississippi 39201
(601) 948-5400

PAUL R. DIMOND
WILLIAM E. CALDWELL
Lawyers' Committee for
Civil Rights Under Law
733 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 628-6700
Attorneys for Petitioners

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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Respondents.

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS

Petitioners, by their attorneys, pursuant to 28 U.S.C. § 1651 and U.S. Sup. Ct. Rule 31(3) respectfully move the Court for leave to file their Petition for a Writ of Mandamus To Enforce the Mandate of This Court, attached hereto, and further move the Court that an order and rule be entered and issued directing Honorable J. P. Coleman, United States Circuit Judge, Honorable Dan M. Russell, Jr., United States District Judge, and Honorable Harold Cox,

United States District Judge, and the United States District Court for the Southern District of Mississippi, to show cause, if any there be, why a writ of mandamus should not be issued against them in accordance with the prayer of said petition, and why your petitioners should not have such other and further relief in the premises as may be just and meet.

FRANK R. PARKER
HERMAN WILSON
Lawyers' Committee for
Civil Rights Under Law
233 North Farish Street
Jackson, Mississippi 39201
(601) 948-5400

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WILLIAM E. CALDWELL
Lawyers' Committee for
Civil Rights Under Law
733 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 628-6700

Attorneys for Petitioners

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Respondents.

PETITION FOR A WRIT OF MANDAMUS TO ENFORCE THE MANDATE OF THIS COURT

Petitioners Peggy J. Connor, Henry J. Kirksey, Anne E. Taylor, Augusta Wheadon, Ralthus Hayes, Catherine Crowell, Elijah Conwell, Jr., and Alma Carnegie, on behalf of themselves and all others similarly situated, and the Mississippi Freedom Democratic Party, an unincorporated association, respectfully pray that a writ of mandamus issue to compel the court below to hold a prompt and speedy hearing, and upon such hearing, promptly order into effect a permanent legislative reapportionment plan for the Mississippi Legislature which comports with constitu-

tional, statutory, and judicial requirements in accordance with the attached Prayer for Relief, and order such special elections as the court may deem necessary to remedy the violations of the rights of petitioners and the members of their class resulting from malapportionment and dilution of Black voting strength.

Petitioners are the plaintiffs in *Connor* v. *Waller,* 421 U.S. 656 (No. 74-1509) (June 5, 1975). After more than 10 years of litigation, petitioners, who are Black registered voters of the State of Mississippi and an unincorporated association representing their interests, have been frustrated by delays in the United States District Court for the Southern District of Mississippi (three-judge court) in their attempts to achieve lawful election districts for the Mississippi Legislature which substantially equalize the population among the districts and do not minimize and cancel out Black voting strength. After twice in this decade being directed by this Court, in the absence of lawful legislative action, to order into effect a permanent statewide legislative reapportionment which meets constitutional requirements, *Connor* v. *Williams,* 404 U.S. 549 (1972), *Connor* v. *Waller, supra,* the court below once again has failed to implement a legally acceptable permanent legislative reapportionment and has reneged on its August 1, 1975 decretal commitment to petitioners and the United States to order a permanent plan by February 1, 1976, and direct that any special elections that may be required be held in conjunction with the 1976 presidential election.

This petition is being filed to enforce the mandates of this Court of January 24, 1972, *Connor* v. *Williams,* 404 U.S. 549, 552, and June 5, 1975, *Connor* v. *Waller, supra.*

OPINIONS AND ORDERS BELOW

After June 5, 1975 remand from this Court in *Connor* v. *Waller, supra,* and after the United States Attorney General had objected pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, to the 1975 plan enacted by the Mississippi Legislature, the District Court entered an order on July 11, 1975 (attached hereto as Appendix F), implementing a temporary reapportionment plan which was based in large part on the objected-to legislative plan and which did not meet legal requirements. After motions were filed by the plaintiffs (App. E) and by the United States as plaintiff-intervenor (App. D) requesting a timetable for implementation of a constitutional and permanent plan, and for special elections pursuant thereto, the District Court on August 1, 1975, entered an order (App. C) indicating its "firm determination" to approve a permanent plan by February 1, 1976, and stating that it "expects" to order any required special elections in conjunction with the 1976 presidential election. When no hearing was ordered by the court for December or January, the United States moved the court for a hearing on a permanent plan for February 10, 1976 (App. B). On January 29, 1976, the District Court ordered *sua sponte* that in light of voting rights cases pending in this Court, further hearing and decision of this case will be "deferred" pending the final resolution of those cases by this Court. A copy of that order is attached hereto as Appendix A.

JURISDICTION

The Order of the three-judge District Court deferring any further hearing and decision in this case was entered on January 29, 1976. This Court's jurisdiction

is invoked pursuant to 28 U.S.C. § 1651 and U.S. Sup. Ct. Rule 31(3). The following cases sustain the jurisdiction of this Court by mandamus to force a lower court to comply with the mandate of this Court: *Will* v. *United States,* 389 U.S. 90, 95-96 (1967); *United States* v. *United States District Court,* 334 U.S. 258, 263 (1948); *In re Sanford Fork & Tool Co.,* 160 U.S. 247, 255 (1895); cf. *United States* v. *Smith,* 331 U.S. 469 (1947). Jurisdiction also is based on the power of this Court to entertain mandamus proceedings against a three-judge District Court in a case directly appealable to this Court, *Williams* v. *Simons,* 355 U.S. 49 (1957), and in cases in which the appellate jurisdiction of this Court is defeated by the action of the lower court, *Ex parte United States,* 287 U.S. 241 (1932).

QUESTION PRESENTED

Whether, after 10 years of litigation in a state legislative reapportionment case, and after remand with specific directions from this Court, and after state legislative elections have been held on the basis of a legally defective temporary court-ordered plan, the District Court exceeded its authority and contravened the mandates of this Court in rescinding a previously-established deadline for a permanent plan and remedial special elections, and in deferring all further proceedings pending the outcome of pending cases in this Court not directly determinative of the issues presented below.

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1651(a), the All Writs Statute, provides:

> The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

STATEMENT OF THE CASE

A. Prior Proceedings

Commenced more than ten years ago, a year after this Court's landmark decision in *Reynolds* v. *Sims,* 377 U.S. 533 (1964), this case has dragged on through three state legislative terms and now into a fourth without providing plaintiffs the full and effective relief to which they are entitled. Begun as *Connor* v. *Johnson,* Civil No. 3830, plaintiffs filed their class action in the United States District Court for the Southern District of Mississippi on October 19, 1965, challenging the then-existing state legislative and congressional apportionments as violative of their rights secured by the Fourteenth and Fifteenth Amendments and implementing Federal civil rights statutes. For relief, plaintiffs sought equally apportioned legislative districts which also protected their right to vote free of racial discrimination.

Prior to the quadrennial state legislative elections of 1967 and 1971, the District Court struck down due to malapportionment plans enacted by the Mississippi Legislature, and substituted court-ordered plans pursuant to which the legislative elections were held. *Connor* v. *Johnson,* 256 F. Supp. 962 (S.D. Miss. 1966); 265 F. Supp. 492 (S.D. Miss. 1967); 330 F. Supp. 506 (S.D. Miss. 1971), *vacated and remanded sub nom. Connor* v. *Williams,* 404 U.S. 549 (1972). Prior to the 1975 state legislative election, after this Court reversed the judgment of the District Court upholding the constitutionality of the 1975 legislative plan and held it subject to the preclearance provisions of Section 5 of

the Voting Rights Act, *Connor* v. *Waller,* 396 F. Supp. 1308 (S.D. Miss. 1975), *rev'd,* 421 U.S. 656 (No. 74-1509, June 5, 1975), the United States Attorney General blocked implementation of the legislative plan by objecting to it pursuant to Section 5 because of racial discrimination,[1] and the District Court reinstated its 1971 court plan with some modifications (App. F).

None of the court-ordered plans in effect for the state legislative elections of 1967, 1971, and 1975 have met legal requirements. The 1967 court plan was malapportioned by deviations of 20.835 percent in the House and 23.237 percent in the Senate, 265 F. Supp. at 504-07, and the 1971 temporary court plan, readopted for the 1975 election with modifications, was malapportioned in floterial districts by deviations of 62.963 percent in the House and 20.292 percent in the Senate,[2]

[1] On July 10, 1975, the authorized representative of United States Attorney General objected under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, to the 1975 legislative plan before this Court in *Connor* v. *Waller, supra,* in a telegram to A. F. Summer, Mississippi Attorney General, stating:

> "We have given careful consideration to these statutes and other relevant information which has come to our attention. On the basis of our analysis, part of which we outlined in our memorandum as amicus curiae filed June 3, 1975, with the United States Supreme Court in Connor v. Waller, No. A968, a copy of which you received, we are unable to conclude, as we must under the Voting Rights Act of 1965, that the implementation of H.B. 1290 and [S.B.] 2976 does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. I must, therefore, on behalf of the Attorney General interpose an objection to the implementation of the redistricting plans contained in H.B. 1290 and S.B. 2976."

[2] For the method of calculation, see Appendix E attached, pp. 24a-25a. For the deviations of the floterial districts mandated by the District Court for the 1971 and 1975 (except for Marshall-DeSoto) legislative elections, see J.S., *Connor* v. *Waller, supra,* Appendix F.

and in nonfloterial districts by 19.729 percent in the House and 18.903 percent in the Senate. 330 F. Supp. at 509-16.

In each case (except for the 1975 interim court plan), prior state policy providing for subdivision of counties into single-member districts[3] was abandoned, and the county unit system was employed in which no counties were subdivided, and voting was countywide or by multi-county districts. In each instance, a majority of the members of both houses of the Mississippi Legislature were elected from multi-member and floterial districts. This meant that Black-majority counties were combined with more populous white-majority counties to create districtwide white majorities, and Black population concentrations sufficiently large for separate representation were minimized and cancelled out in countywide and districtwide voting in multi-member districts. See J.S., *Connor* v. *Waller, supra,* pp. 8-14.[4]

As a result, in the 1967 and 1971 legislative elections only one Black Representative was elected to the 122-member Mississippi House of Representatives. In the 1975 elections held under the temporary court-ordered plan, three additional Black Representatives—all from Hinds County, where the District Court finally

[3] See Miss. Const., art. 13, § 254, pars. 12-15 (1890); Miss. Code Ann. § 3326 (1956 Recomp.); Miss Code Ann. §23-5-175 (1972); J.S., *Connor* v. *Waller, supra,* p. 24.

[4] In all three court-ordered plans, the District Court required candidates in multi-member districts to run by posts (restricting each candidate to a particular "post" or place on the ballot), 265 F. Supp. at 496, 498; 330 F. Supp. at 509. In addition, state law required, and still requires, a majority vote to win party primaries, Miss. Code Ann. § 23-3-69 (1972), and prohibits single-shot voting in legislative elections, Miss. Code Ann. § 3110 (1956 Recomp.).

ordered single-member House districts—were elected. The 52-member Mississippi Senate remains all-white.[5]

B. Noncompliance with This Court's Mandates

On January 24, 1972, this Court withheld final decision on the constitutionality of the District Court's 1971 plan as a permanent legislative reapportionment plan for Mississippi on the ground that the District Court's deliberations were incomplete and "it would be preferable to have before us a final judgment with respect to the entire State." *Connor* v. *Williams*, 404 U.S. 549, 551-52. The judgment of the District Court establishing temporary court-ordered districts for the 1971 election was vacated, except insofar as it applied to the 1971 elections, and the case was remanded to the District Court "for further proceedings consistent with this opinion." *Id.* at 552.

After many delays in the District Court, the case came here again last Term, and on June 5, 1975, holding that the 1975 legislative plan was subject to Section 5 preclearance provisions, this Court reversed the judgment of the District Court and specifically held:

[5] This disparity is not the result of defeat at the polls in fairly-run elections, but derives from past and continuing denials to Blacks in Mississippi of equal access to the political process, to which the passage of the Voting Rights Act in 1965 and its extension by Congress in 1970 and 1975 was particularly directed. See *United States* v. *Mississippi*, 380 U.S. 128 (1965); *Hearings on the Voting Rights Act of 1965 Before the Senate Comm. on the Judiciary*, 89th Cong., 1st Sess. (1965); *Hearings on the Extension of the Voting Rights Act Before Subcomm. No. 5 of the House Comm. on the Judiciary*, 91st Cong., 1st Sess., ser. 3 (1969); *Hearings on the Extension of the Voting Rights Act of 1965 Before the Subcomm. on Constitutional Rights of the Senate Comm. on the Judiciary*, 94th Cong., 1st Sess. (1975); H.R. Rep. No. 94-196, 94th Cong., 1st Sess. (1975); S. Rep. No. 94-295, 94th Cong., 1st Sess. (1975); J.S., *Connor* v. *Waller*, *supra*, pp. 8-19.

> "This reversal is, however, without prejudice to the authority of the District Court, if it should become appropriate, to entertain a proceeding to require the conduct of the 1975 elections pursuant to a court-ordered reapportionment plan that complies with this Court's decisions in *Mahan* v. *Howell*, 410 U.S. 315 (1973), *Connor* v. *Williams*, 404 U.S. 549 (1972), and *Chapman* v. *Meier*, —— U.S. —— (1975)." *Connor* v. *Waller*, *supra*.

To date, the District Court has failed to comply with either of this Court's specific directions. More than four years after this Court's mandate of January 24, 1972, the District Court has failed to promulgate a permanent plan and render "a final judgment with respect to the entire State." Eight months after this Court's mandate of June 5, 1975, and after the regular 1975 state legislative elections have been held, the District Court has not yet required the conduct of legislative elections pursuant to a court-ordered reapportionment plan that complies with this Court's decisions in *Mahan* v. *Howell*, *Connor* v. *Williams*, and *Chapman* v. *Meier*. Now, on January 29, 1976, the District Court has entered an Order which rescinds its own self-imposed deadline for approval of a permanent plan before February 1, 1976, and special elections in conjunction with the 1976 presidential election, and indefinitely defers any further hearing or decision pending the resolution in this Court of three voting rights cases which are not directly determinative of this case.

C. The 1975 Court Plan

The 1975 legislative plan approved by the District Court, *Connor* v. *Waller*, 396 F. Supp. 1308 (S.D. Miss. 1975), *rev'd*, 421 U.S. 656 (1975), but held subject to

Section 5 clearance by this Court, and subsequently objected to by the United States Attorney General because of racial discrimination, was identical to the 1971 District Court plan. J.S., *Connor* v. *Waller, supra,* p. 7. When the Attorney General by his objection rendered the 1975 legislative plan unenforceable, the District Court readopted it as its own plan, with some variations, for "temporary" use in the 1975 legislative elections. Order Establishing Certain Temporary Districts For The Election of Senators and Representatives in the Mississippi Legislature for the Year 1975 Only, filed July 11, 1975, attached hereto as Appendix F.[6] The basic structure of the 1971 court plan (and the 1975 discriminatory legislation) was preserved intact with the following changes:

For the House, single-member districts were created in the central Mississippi counties of Hinds and Madison, and in the Gulf Coast counties of Harrison, Jackson, George, Stone, and Greene, except that two Representatives were still elected at-large in Harrison. Marshall County, in north Mississippi, was given one direct Representative, elected countywide. For the Senate, single-member districts were created only in Hinds County, coinciding with supervisors' districts plaintiffs objected to as racially gerrymandered.

[6] Several alternatives were available to the District Court. At the hearings on February 7 and May 7, 1975, plaintiffs presented to the court two sets of legislative redistricting plans providing for single-member districts statewide for both houses of the Mississippi Legislature. One set, drawn by Dr. David Valinsky, who drew the Alabama plan accepted by this Court in *Amos* v. *Sims*, 409 U.S. 942 (1972), contained total deviations of only 5.39% for the House and 3.39% for the Senate. The other, produced by Mr. Henry J. Kirksey, a cartographer who is also a plaintiff in the case, provided total deviations of only 5.75% in the House and 5.01% in the Senate. J.S., *Connor* v. *Waller, supra,* pp. 22-24.

Other features of the plan plaintiffs objected to as discriminatory, such as multi-member districts and at-large countywide voting elsewhere in the state, J.S. *Connor* v. *Waller, supra,* pp. 8-14, were preserved intact. For the House, 51 of the 84 districts established by the 1975 court plan were multi-member districts, electing 72.95 percent of the House membership (89 out of 122 Representatives). For the Senate, 15 of the 39 districts were multi-member districts, electing 53.85 percent of the Senate membership (28 out of 52 senators). *See* Appendix E, pp. 17a-19a. As a result, the 1975 interim court plan retained in many areas the discriminatory features about which plaintiffs complained—multi-county districts and countywide voting which cancelled out Black voting strength—and to which the Attorney General objected on July 10, 1975 (*see* note 1, *supra*).

The District Court itself noted that there were dilution problems with its plan in instances in which Black majority counties were joined with white majority counties for districtwide white voting majorities, Order of July 11, 1975, App. F, pp. 33a-45a. The District Court concluded that time and available data did not permit single-member districting in those areas prior to the August 5, 1975, Democratic primary, but did indicate in some instances that multi-member districts should be divided into single-member districts in the permanent plan. *Id.*

None of the districts were altered to remedy the malapportionment present in the 1971 court plan, and thus the 1975 court plan contained deviations of more than 62.963 percent in the House and 20.292 percent in the Senate for floterial districts, and 19.729 percent

in the House and 18.903 percent in the Senate for non-floterial districts.

D. Permanent Plan Deferred

After the District Court on July 11, 1975, promulgated its Order Establishing Certain Temporary Districts For The Election of Senators and Representatives in the Mississippi Legislature for the Year 1975 Only, plaintiffs filed a motion to alter or amend the judgment pointing out that the temporary plan failed to comply with the June 5, 1975 mandate of this Court, *Connor* v. *Waller, supra,* and failed to meet the requirements, as directed, of *Mahan* v. *Howell,* 410 U.S. 315 (1973), *Connor* v. *Williams,* 404 U.S. 549 (1972), and *Chapman* v. *Meier,* 420 U.S. 1 (1975). Plaintiffs objected that under the District Court's 1975 plan a majority of the members of both houses of the Mississippi Legislature were elected from unconstitutional multi-member districts, there was no finding that single-member districts were not feasible, and the deviations from population equality were unconstitutional under *Chapman* (in which a total deviation of 20 percent in a court-ordered plan was held constitutionally impermissible). For relief, plaintiffs requested the Court to set a February 1, 1976 deadline for promulgation of a permanent plan and order special elections held in conjunction with the 1976 presidential election. A copy of plaintiffs' motion is attached as Appendix E. The United States, as plaintiff-intervenor, joined in plaintiff's request that the District Court establish a schedule for the adoption of a permanent plan and special elections (App. D). On August 1, 1975, the District Court declined to set a firm deadline for a permanent plan, but indicated that it "expects to have such a plan approved before February

1, 1976," and further stated: "The Court reiterates its firm determination to have this matter out of the way before February 1, 1976." App. C, p. 4a. As to special elections, the Court stated:

> "As to all instances in which a special election may be required, the Court expects to direct that the same shall be held in conjunction with the 1976 Presidential election so as to save the expense of special elections, as far as possible." *Id.,* p. 5a.

Although plaintiffs and the United States complied with those portions of the District Court's July 11, 1975 Order requiring the submission of proposed permanent plans (App. F, pp. 52a-53a), no hearing was scheduled by the court for December or January in anticipation of the February 1 deadline. In January, 1976, the United States filed a request for a hearing date and moved the District Court for a hearing on February 10 on a permanent plan (App. B).

On January 29, 1976, the District Court entered an Order, Appendix A, in which it in effect rescinded its own "firm determination to have this matter out of the way before February 1, 1976," and attempted to eliminate the possibility of special elections in November, 1976. The court ordered that "further hearing and decision of this case will be deferred" pending decisions in this Court of pending voting rights cases.

E. History of Delay in the District Court

This case is truly extraordinary because of its history of excessive and unjustified delays in the District Court, which have had the effect, and which continue

to have the effect, of denying to plaintiffs the relief to which they are entitled.

1. On plaintiffs' appeal from the District Court's 1971 judgment establishing court-ordered districts, 330 F. Supp. 506, this Court on June 3, 1971, granted interim relief pending appeal and ordered that:

> "The District Court is instructed, absent insurmountable difficulties, to devise and put into effect a single-member district plan for Hinds County by [June 14, 1971]." *Connor* v. *Johnson,* 402 U.S. 690, 692 (1971).

In response, the District Court on June 16, 1971 repeated its earlier conclusion of May 18, 1971 that "with the time left available it is a matter of sheer impossibility to obtain dependable data, population figures, boundary locations, etc." to create single-member districts for Hinds County for the 1971 elections. *Connor* v. *Johnson,* 330 F. Supp. 521, 522 (S.D. Miss. 1971). Adopting the conclusions of a Special Master, the District Court held:

> "The Special Master, for the reasons enumerated in his report, concluded that no accurate or reliable population totals are available by new supervisors district lines, or new precinct lines. There appears to be no way, except by a new enumeration of population, to accurately determine the number of people within existing precinct boundaries.
>
> "Under these facts and circumstances, this Court finds as an irrefragable fact that it is confronted with insurmountable difficulties against the division of Hinds County, Mississippi into separate single member districts for the election of five Senators and twelve Representatives." *Id.* at 523.

On the basis of these findings by the District Court, this Court denied plaintiffs' subsequent application for further relief, 402 U.S. 928.

Yet four years later, between June 10, 1975 (the Attorney General's objection to the 1975 legislative plan) and July 11, the District Court accomplished during a period much closer to the 1975 elections what it found was "impossible" to do in 1971—divide Hinds County into single-member districts—and more.

2. On January 24, 1972, this Court withheld final decision on the constitutionality of the District Court's 1971 plan as a permanent reapportionment plan for Mississippi on the ground that the District Court's deliberations were incomplete and "it would be preferable to have before us a final judgment with respect to the entire State." *Connor* v. *Williams,* 404 U.S. 549, 551-52. The Court noted that the District Court had retained jurisdiction of the question of the multi-member districts in Hinds, Harrison, and Jackson Counties and had indicated that it "expects to appoint a special master" as of January 1, 1972, "to take testimony and make findings" regarding the feasibility of single-member districts for Hinds, Harrison, and Jackson (330 F. Supp. at 519). This Court directed:

> "Such proceedings should go forward and be promptly concluded, for, as this Court has emphasized, 'when District Courts are forced to fashion apportionment plans, single-member districts are preferable to large multi-member districts as a general matter.' Connor v. Johnson, 402 U.S. 690, 692." *Id.* at 551.

On remand, no special master was appointed as directed, and no testimony was taken nor findings made

on the feasibility of devising single-member legislative districts for those counties.[7]

3. On March 13, 1973, after the passage by the Mississippi Legislature of H.B. 446 and S.B. 1701 (1973 Reg. Sess.), see J.S., *Connor* v. *Walter, supra,* p. 7, the District Court entered an Order for Plaintiffs To Show Cause why the 1973 legislation should not be approved by the District Court, and in that Order set a show cause hearing for April 20, 1973.[8] Plaintiffs filed their objections to H.B. 446 and S.B. 1701, and also to H.B. 1389 and S.B. 2452 which were enacted subsequently. Counsel for the plaintiffs and defendants appeared for the April 20 show cause hearing, but even though the show cause order was not rescinded, the judges failed to appear, no hearing was held, and no explanation was ever issued from the court for its failure to hold the scheduled hearing. After the court failed to convene the scheduled hearing, counsel for plaintiffs filed motions and wrote letters requesting a hearing on the constitutionality of the 1973 legislation, but no hearing was held by the District Court until February 7, 1975, almost two years after the original setting.

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[7] The Hinds County single-member plan incorporated in the District Court's Order of July 11, 1975, Appendix F, was devised with the assistance of a special master, but no formal appointment was made until the July 11 Order was entered. App. F, p. 53a.

[8] A copy of the docket entries in this case, indicating all proceedings since the case was filed, is attached hereto as Appendix G.

REASONS FOR GRANTING THE WRIT

I. The Refusal of the District Court To Hold a Hearing and Render a Decision on a Permanent Reapportionment Plan Amounts to a Nullification of and Failure To Enforce the Prior Mandates of This Court.

In *Thermtron Products, Inc.* v. *Hermansdorfer,* 44 U.S.L.W. 4085, 4090 (No. 74-206) (U.S. Jan. 20, 1976), this Court reaffirmed its power, by mandamus, to compel a lower court to exercise its authority when it has a duty to do so, and to direct a subordinate Federal court to decide a pending cause:

> "A 'traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal court has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.' *Roche* v. *Evaporated Milk Association,* 319 U.S. 21, 26 (1943); *Ex parte Peru,* 318 U.S. 578, 584 (1943); *Bankers Life & Casualty Co.* v. *Holland,* 346 U.S. 379, 382 (1953). 'Repeated decisions of this Court have established the rule . . . that the writ will lie in a proper case to direct a subordinate Federal court to decide a pending cause,' *Insurance Co.* v. *Comstock,* 16 Wall. 258, 270, or to require 'a Federal court of inferior jurisdiction to reinstate a case, and to proceed to try and adjudicate the same.' *McClellan* v. *Carland,* 217 U.S. 268, 280."

In this case, mandamus lies both (a) to compel compliance with and prevent obstruction of the mandate of this Court to the court below to implement a constitutional and lawful permanent plan,[9] and (b) to

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[9] "When a lower federal court refuses to give effect to, or misconstrues, our mandate, its action may be controlled by this court, either upon a new appeal or by a writ of mandamus. *Re Potts,* 166

review the propriety of the order of the District Court staying further proceedings to correct an abuse of discretion.[10]

Although mandamus, prohibition, and injunction against judges are "drastic and extraordinary remedies," *Ex parte Fahey*, 332 U.S. 258, 259 (1947), this is a truly extraordinary case, having gone on for more than ten years without plaintiffs obtaining any effective relief. Twice in this decade this Court has remanded this case to the District Court with specific directions to enter a final judgment, or permanent plan, with respect to the State as a whole which comports with legal requirements. The District Court not only has failed to enforce this mandate, but now has entered an order which defers any further hearing or decision, thus once again denying to plaintiffs effective relief. The January 29, 1976 deferral order of the District Court amounts to a "clear abuse of discretion," *Bankers Life & Cas. Co.* v. *Holland*, 346 U.S. 379, 383 (1953), and for practical purposes nullifies the prior mandates of this Court, cf. *La Buy* v. *Howes Leather Co.*, 352 U.S. 249, 256 (1957).

U.S. 263, 265; *Re Sanford Fork & Tool Co.*, 160 U.S. 247, 255, and cases cited. It is well understood that this Court has power to do all that is necessary to give effect to its judgments." *B. & O.R. Co.* v. *United States*, 279 U.S. 781, 785 (1929). *Accord, United States* v. *Haley*, 371 U.S. 18 (1962).

[10] *Filtrol Corp.* v. *Kelleher*, 467 F.2d 242, 244 (9th Cir. 1972), *cert. denied*, 409 U.S. 1110 (1973); *Dellinger* v. *Mitchell*, 442 F.2d 782, 788-90 (D.C. Cir. 1971); *ACF Industries, Inc.* v. *Guinn*, 384 F.2d 15, 18 (5th Cir. 1967), *cert. denied*, 390 U.S. 949 (1968); 9 *Moore's Federal Practice* ¶ 110.20 [4.-2], p. 250 (2d ed. 1975); *cf. Idlewild Liquor Corp.* v. *Epstein*, 370 U.S. 713 (1962); *La Buy* v. *Howes Leather Co.*, 352 U.S. 249 (1957).

By the District Court's own Order of August 1, 1975, App. C, the holding of the 1975 state legislative elections on the basis of an unconstitutional interim plan was expressly conditioned on prompt post-election promulgation of a permanent plan and remedial special elections in November, 1976. As early as 1964 this Court held,

> "[O]nce a State's legislative apportionment scheme has been found to be unconstitutional, it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan." *Reynolds* v. *Sims, supra*, 377 U.S. at 585.

Here the District Court ordered the 1975 legislative elections conducted under a plan (except for the 1975 modifications) which not only was vacated by this Court in 1972, *Connor* v. *Williams, supra*, but also was objected to by the Attorney General under the Voting Rights Act as racially discriminatory.

Under these circumstances, prompt and effective remedial relief is required. The deferral order of the District Court, conditioning any further proceedings upon decisions in pending cases in this Court, effectively delays any further hearings on a permanent plan, let alone a decision on a permanent plan, until June, 1976, or later. Given that this District Court in prior proceedings in this case, *Connor* v. *Johnson, supra*, 330 F. Supp. at 519, 330 F. Supp. at 552, has held that May and June, respectively, were too late to promulgate single-member districts in time for fall elections, the effect of the District Court's order, under its own prior timetables and interpretations, is to delay remedial

special elections until 1977 or beyond. Such delay is absolutely intolerable, given the past history of delay in effectuating plaintiffs' voting rights, and affecting as it does the legitimacy of a state legislature elected under a temporary unconstitutional redistricting plan and the fundamental rights of Mississippi voters to cast their ballots free of discriminatory districting and malapportioned districts.

Also under these circumstances, the reason given by the District Court for this delay fails to outweigh plaintiffs' right to immediate relief. *Cf. Landis* v. *North America Co.*, 299 U.S. 248, 255-57 (1936). The only reason given by the District Court for this deferral is that it required "badly needed guidance" from this Court on the racial dilution issue, and hoped to receive it from this Court's decisions in *United Jewish Org. of Williamsburgh* v. *Carey*, 44 U.S.L.W. 3279 (No. 75-104) (U.S. Nov. 11, 1975), *granting cert. to United Jewish Org. of Williamsburgh, Inc.* v. *Wilson*, 510 F.2d 512 (2d Cir. 1975); *Beer* v. *United States*, 419 U.S. 822 (1974), *noting prob. juris. of* 374 F. Supp. 363 (D.D.C. 1974) (three-judge court); and *East Carroll Parish School Board* v. *Marshall*, 422 U.S. 1055 (1975), *granting cert. to Zimmer* v. *McKeithen*, 485 F.2d 1297 (5th Cir. 1973) (en banc).

This purported justification totally fails to support the delay action of the District Court. First, in its last mandate to the District Court on June 5, 1975, *Connor* v. *Waller, supra,* this Court provided the District Court with all the "badly needed guidance" it needed when it specifically required that the court-ordered reapportionment plan comply with this Court's decisions in *Mahan* v. *Howell, Connor* v. *Williams,* and *Chapman*

v. *Meier.*[11] It is unlikely, and no indication has been given, that this Court plans to overrule any of those decisions in any of the pending cases.

Second, delay is unjustified because, as it often does, this Court may well decide the pending cases referred to by the District Court on a basis not dispositive of the issues *sub judice*. Indeed, it is difficult to see how the resolution of those cases will affect this case. In *United Jewish Organizations,* the question is whether a legislatively-drawn redistricting plan (not a court-ordered plan as is required here) unconstitutionally discriminated against the Williamsburgh Hasidic Jewish community to avoid discrimination against a Black population concentration and to meet the criteria for approval by the Department of Justice under Section 5 of the Voting Rights Act. In *East Carroll Parish School Bd.* the questions are whether the parish redistricting drawn by local authorities in response to a court order is subject to Section 5 preclearance procedures, a question already resolved here, and if not, whether at-large multi-member districts are unconstitutional, a question already resolved by the Court for court-drawn plans in *Chapman* v. *Meier,* and already

[11] Since the time of these decisions and the June 5, 1975 mandate of this Court, Congress has given additional specific guidance on the racial dilution issue to district courts charged with fashioning acceptable plans upon legislative default:

> [I]n fashioning the plan, the court should follow the appropriate Section 5 standards, including the body of administrative and judicial precedents developed in Section 5 cases.

S.Rep. No. 94-295, 94th Cong., 1st Sess. 19 (1975). In this very case the Attorney General has objected to the racially discriminatory plans (*see* note 1, *supra*) and has continued, as an intervening party, to advise the District Court of the substantive requirements of Section 5. The District Court has chosen to ignore this guidance as well as the specific mandates of this Court.

specifically ordered in this case. *Beer* involves the standard of review by a District Court in reviewing a locally-drawn city council redistricting objected to by the Attorney General under Section 5, and whether the at-large seats in effect prior to November 1964 are covered by Section 5 review.[12] In each of these pending cases, the questions presented involve review of redistricting plans drawn by local governing authorities, not a court-ordered plan as is required here.

Third, it has now been over ten years since this case was filed, and over four years since this case was remanded to the District Court for a permanent plan; any further delay is therefore intolerable. The deferral action of the District Court has the effect of abrogating petitioners' constitutional and statutory rights and the mandates of this Court for as long as the District Court thinks pending voting rights cases in this Court may modify the prior decisions and directions of this Court. *Cf. Ex parte Kumezo Kawato,* 317 U.S. 69 (1942) (mandamus issued to vacate District Court's order abating libel in admiralty brought by resident alien during pendency of World War II); *Hall* v. *West,* 335 F.2d 481 (5th Cir. 1964) (mandamus issued to compel decision in eleven-year-old school desegregation case).

Fourth, in any event, should the District Court promulgate a permanent plan, and this Court rules squarely adverse to the District Court decision in any of the pending cases, defendants would remain free

[12] In *Beer* the Court noted probable jurisdiction last Term and the case had been argued at the time of the June 5, 1975 decision in this case. The Court's June 5 decision made no mention of *Beer* and gave no indication that the district court should or could defer decision pending the disposition of *Beer* or any other case.

swiftly and inexpensively to reenter the District Court for relief from its judgment. Rule 60(b), F.R. Civ. P.

II. Petitioners Have No Other Adequate Remedy

Mandamus may be denied where petitioners have some other adequate remedy, *Ex parte Peru, supra,* 318 U.S. at 584, but petitioners here have no other adequate remedy. Plaintiffs, by filing their motion to alter and amend the judgment requesting a permanent plan by February 1, 1976 (App. E), and plaintiff-intervenor United States by requesting the District Court to set a timetable and deadline for a permanent plan (App. D), already have requested the District Court for a prompt and speedy hearing and determination. The deferral order of the District Court (App. A) specifically denies the United States' request for a February 10 hearing. By refusing to act, and by deferring all further proceedings, the District Court has defeated petitioners' right to appeal from a final decision or from an order denying requested injunctive relief. 28 U.S.C. § 1253.

Because the writ of mandamus is being sought to enforce the appellate jurisdiction of this Court and to enforce its mandates, the writ is not available in the court of appeals. The typical use of mandamus is to require the lower court to enforce the judgment of the appellate court, *United States* v. *United States District Court,* 334 U.S. 258, 263-64 (1948), and when the lower court violates the mandate of the Supreme Court, mandamus in the Supreme Court is the proper remedy, *id.*; *Re Washington & G. R. Co.,* 140 U.S. 91 (1891). Otherwise, the courts of appeals would have the inappropriate power to interpret or unduly limit the judgments of this Court. Since mandamus pursuant to the

All Writs Act, 28 U.S.C. § 1651, is in aid of appellate jurisdiction, *United States* v. *United States District Court, supra,* at 263, the power to issue the writ vests in the court with direct appellate jurisdiction, *Ex parte United States,* 287 U.S. 241, 248-49 (1932), here, this Court. 28 U.S.C. § 1253; 42 U.S.C. § 1973c.

Even if the case were one with direct appellate jurisdiction vesting in the court of appeals, this Court has affirmed its power to issue the writ directly to a district court "where a question of public importance is involved, or where the question is of such a nature that it is peculiarly appropriate that such action by this court should be taken." *Ex parte Peru, supra,* 318 U.S. at 585; *Ex parte United States, supra* at 248-49. More is at stake here than merely "the danger of denying justice by delay." *Kelley* v. *Metropolitan County Board of Education of Nashville,* 436 F.2d 856, 862 (6th Cir. 1970). Petitioners' constitutional and statutory rights—"warrants for the here and now," *Watson* v. *City of Memphis,* 373 U.S. 526, 533 (1963)—have already been denied in the face of a decade of effort to secure those rights—not in the streets, but in the courts. It is certain that that injustice will be perpetuated unless this Court acts now to set the District Court on the road to decision.

CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, and on the basis of the authorities cited, petitioners pray that a writ of mandamus issue to Honorable J. P. Coleman, Circuit Judge, Honorable Dan M. Russell, Jr., District Judge, Honorable Harold Cox, District Judge, and the United States District Court for the Southern District of Mississippi, directing them to:

1. Vacate the Order for deferral of January 29, 1976;

2. Promptly convene and hold a hearing on a permanent plan for reapportionment of both houses of the Mississippi Legislature, and within 30 days after such hearing order into effect a permanent court-ordered legislative reapportionment plan, subject to subsequent constitutional legislative action approved pursuant to Section 5 of the Voting Rights Act of 1965, which complies with this Court's directions of June 5, 1975, *Connor* v. *Waller, supra,* and order such special elections as may be required to be held in conjunction with the 1976 presidential election to remedy dilution of Black voting strength and malapportionment in the 1975 temporary court-ordered plan.

Alternatively, if the respondents are unwilling or unable to take prompt and effective action to secure petitioners' constitutional rights, petitioners pray that this Court issue an order to the Chief Judge of the United States Court of Appeals for the Fifth Circuit directing him to certify another three-judge District Court composed of other judges to convene promptly to rule on a permanent court-ordered legislative reapportionment plan and special elections. Cf. *Cascade Nat. Gas Corp.* v. *El Paso Nat. Gas Corp.,* 386 U.S. 129, 142-43 (1967).

Respectfully submitted,

FRANK R. PARKER
HERMAN WILSON
Lawyers' Committee for
Civil Rights Under Law
233 North Farish Street
Jackson, Mississippi 39201
(601) 948-5400

PAUL R. DIMOND
WILLIAM E. CALDWELL
Lawyers' Committee for
Civil Rights Under Law
733 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 628-6700

Attorneys for Petitioners

APPENDICES

APPENDICES

Appendix A. District Court order deferring further hearing and decision of this case, filed January 29, 1976.

Appendix B. Motion of United States for February 10, 1976 hearing date, filed January 26, 1976.

Appendix C. District Court order setting February 1, 1976 target date for permanent plan and special elections in conjunction with 1976 presidential election, filed August 1, 1975.

Appendix D. Motion of United States for amendment of judgment for timetable for permanent plan and special elections, filed July 24, 1975.

Appendix E. Plaintiffs' motion to alter and amend judgment setting February 1, 1976 deadline for permanent plan and special elections in conjunction with 1976 presidential election, filed July 21, 1975 (excluding exhibits to the motion).

Appendix F. District Court order establishing certain temporary districts for the election of senators and representatives in the Mississippi Legislature for the year 1975 only, filed July 11, 1975.

Appendix G. Docket entries, Connor v. Waller (formerly Johnson), Civil No. 3830, S.D. Miss., filed October 19, 1965.

APPENDIX A

District Court Order Deferring Further Hearing and Decision of This Case, Filed January 29, 1976.

[Filed Jan. 29, 1976]

CIVIL ACTION No. 3830(A)

PEGGY J. CONNOR, et al., *Plaintiffs*,

v.

WILLIAM L. WALLER, et al., *Defendants*,

and

UNITED STATES OF AMERICA, *Plaintiff-Intervenor*.

ORDER

In this case the United States has moved the Court to establish February 10, 1976, as the date for hearing on the plans for permanent apportionment of the State of Mississippi and any other matters now pending in this cause before this Court.

Nothing could hardly give this Court any more satisfaction than to be able to hear and decide this case, putting an end, hopefully, to the litigation which has been running for ten years with numerous decisions which we shall not pause here to recite.

It had been the declared intention of this Court to bring the instant litigation to a decision no later than February 1, 1976.

In the meantime, events have occurred which lead the Court to believe that it most likely is about to receive some badly needed guidance from the Supreme Court of the United States on the perplexing issues involved in this case, the chief of which is impermissible dilution and minimization of the black vote.

The Supreme Court has granted certiorari or noted jurisdiction in the following three cases: United Jewish Organization of Williamsburgh, Inc. v. Wilson, 2 Cir., 1975, 510 F.2d 512, *cert. granted sub nom.* United Jewish Organization of Williamsburgh, Inc. v. Carey, 44 U.S.L.W. 3279 (November 11, 1975); Beer v. United States, D.C. D.C., 1974, 374 F. Supp. 363, *prob. juris. noted,* 419 U.S. 822, 95 S.Ct. 37, 42 L.Ed.2d 45; Zimmer v. McKeithen, 5 Cir., 1973, 485 F.2d 1297 (en banc) *cert. granted sub nom.* East Carroll Parish School Board v. Marshall, 1975, 422 U.S. 1055, 95 S.Ct. 2677, 45 L.Ed.2d 707.

The *Beer* case has already been orally argued.

In the light of the foregoing, it is ORDERED

That further hearing and decision of this case will be deferred until the Supreme Court shall have decided the above cases and until this Court can hear the case in the light of any rules, standards, or other guidance which may appear in said decisions.

When the Supreme Court shall have decided said cases, this Court will bring this case to trial forthwith.

So ORDERED, this the 26 day of January, 1975.

/s/ JAS. P. COLEMAN
United States Circuit Judge

/s/ DAN M. RUSSELL, JR.
Chief United States District Judge

/s/ HAROLD COX
United States District Judge

APPENDIX B

Motion of United States for February 10, 1976 Hearing Date. Filed January 26, 1976.

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

CIVIL ACTION No. 3830(A)

Request for Hearing Date

PEGGY J. CONNOR, et al., *Plaintiffs,*

v.

WILLIAM L. WALLER, et al., *Defendants,*

and

UNITED STATES OF AMERICA, *Plaintiff-Intervenor.*

The United States hereby moves that this Court establish February 10, 1976, as the date for a hearing on the plans for permanent apportionment of the State of Mississippi and any other matters now pending in this cause before the Court.

/s/ GERALD W. JONES
Gerald W. Jones
Michael D. Johnson
Attorneys
Department of Justice
Washington, D.C. 25030

APPENDIX C

District Court Order Setting February 1, 1976 Target Date for Permanent Plan and Special Elections in Conjunction with 1976 Presidential Election. Filed August 1, 1975.

[Filed Aug. 1, 1975]

CIVIL ACTION No. 3830(A)

PEGGY J. CONNOR, ET AL., *Plaintiffs,*

VS

WILLIAM L. WALLER, ET AL., *Defendants,*

and

UNITED STATES OF AMERICA, *Plaintiff-Intervenor.*

Before COLEMAN, Circuit Judge, RUSSELL, Chief District Judge, and COX, District Judge.

ORDER

By this order the Court rules on the motion filed by the plaintiffs in this cause on July 21, and filed by the United States of America on July 24.

Plaintiffs move that the Court set a deadline of February 1, 1976, for the completion of a permanent plan for the reapportionment of the Mississippi Legislature. The Court expects to have such a plan approved before February 1, 1976. Understanding, however, the vagaries of litigation and not being able to foresee the future as to complications now unexpected but which might arise, the Court declines to set a deadline upon its own efforts. The Court reiterates its firm determination to have this matter out of the way before February 1, 1976.

Plaintiffs move the Court now to establish a specific date for special legislative elections, preferably in the general

elections of 1976. As to all instances in which a special election may be required, the Court expects to direct that the same shall be held in conjunction with the 1976 Presidential election so as to save the expense of special elections, as far as possible.

Plaintiffs move that that portion of the Court's order appointing Hoyt T. Holland, Jr. as special master be deleted. The Court expects to formulate its own permanent plan and the duties of Mr. Hoyt T. Holland specifically will be only to assist in that regard. It is correct that he made some errors in the data furnished for the temporary plan, but under the excruciatingly short time available the Court made some also, of a mathematical and stenographical nature.

The matter of costs and attorneys fees will be decided in the final judgment establishing the permanent plan and after the Court has had an opportunity to hear evidence and argument on the features of the case.

This disposition of the plaintiffs motion likewise disposes of the motion filed on behalf of the United States.

So ORDERED, this the 1st day of August, 1975.

/s/ JAS. P. COLEMAN
United States Circuit Judge

/s/ DAN M. RUSSELL, JR.
Chief United States District Judge

/s/ HAROLD COX
United States District Judge

APPENDIX D

Motion of United States for Amendment of Judgment for Timetable for Permanent Plan and Special Elections, Filed July 24, 1975.

[Filed July 24, 1975]

CIVIL ACTION No. 3830(A)

PEGGY J. CONNOR, ET AL., *Plaintiffs,*

and

UNITED STATES OF AMERICA, *Plaintiff-Intervenor,*

v.

WILLIAM L. WALLER, ET AL.

MOTION OF THE UNITED STATES FOR AMENDMENT OF JUDGMENT

The United States moves the Court, pursuant to rule 59, F.R. Civ.P., for an amendment of its judgment, incorporated in its order of July 11, 1975, to establish a schedule for the adoption of a permanent plan of reapportionment of the Mississippi legislature and for the holding of special elections pursuant thereto.

As reasons therefor the United States states as follows:

The temporary plan ordered by the Court does not meet constitutional standards.

When elections are conducted in violation of constitutional and statutory protections of the right to vote, those elections should be set aside and new elections held.

Absent some relief, legislators will, for the second time, be elected under a plan which the Court itself considers less than satisfactory.

There is ample precedent for aborting the terms of officers elected under an interim plan or one not meeting constitutional rquirements and ordering permanent relief according to a court imposed schedule after an acceptable plan is perfected.

GERALD W. JONES
Attorney
Department of Justice
Washington, D.C. 25030
ROBERT E. HAUBERG
United States Attorney
By:
/s/ L. K. TRAVIS
L. K. Travis
Assistant United States Attorney

APPENDIX E

Plaintiffs' Motion to Alter and Amend Judgment Setting February 1, 1976 Deadline for Permanent Plan and Special Elections in Conjunction with 1976 Presidential Election, Filed July 21, 1975 (Excluding Exhibits to the Motion).

[Filed July 21, 1975]

CIVIL ACTION No. 3830(A)

PEGGY J. CONNOR, et al., *Plaintiffs,*

vs

WILLIAM L. WALLER, ET AL., *Defendants,*

and

UNITED STATES OF AMERICA, *Plaintiff-Intervenor.*

MOTION TO ALTER OR AMEND JUDGMENT

Plaintiffs, by their attorneys, respectfully move the Court pursuant to Rule 59, F.R. Civ. P., to alter or amend its Order of July 11, 1975, to

(a) Establish a date for approval by the Court of the permanent plan for reapportionment of the Mississippi Legislature referred to by the Court in its Order of July 11, 1975, at pp. 9, 14, 19, 22, 26, 44 and *passim,* designed to correct the racially discriminatory and malapportioned features of the 1975 temporary plan;

(b) Establish a specific date for special legislative elections prior to the next scheduled 1979 legislative elections to cure the defects of the 1975 temporary plan;

(c) Delete that portion of the Court's Order appointing Mr. Hoyt T. Holland, Jr., as a special master of the Court in this case; and

(d) Award plaintiffs their taxable costs, necessary expenses of the litigation and reasonable attorneys fees.

Plaintiffs respectfully request the Court to enter an order that it will render a decision on or before February 1, 1976, ordering into effect a permanent court-ordered legislative reapportionment plan for the Mississippi Legislature, and order special legislative elections in conjunction with the 1976 presidential election to cure the defects in the temporary 1975 plan.

As grounds for their motion, plaintiffs would show to the Court as follows:

A. *Dilution of Black Voting Strength.*

1. *House Plan.* The Court itself noted in its discussion of the 1975 court-ordered House districts (Order, pp. 13-27) that there was a potential for racial dilution in some of the districts left standing by the Court, and that further study was required of House Districts 14, 17, 30, 11, 15, 23A, 23B, and 24.

There are 17 Mississippi counties which have a Black majority voting age population (BVAP). Under the 1975 court-ordered House plan, six of these counties are combined with white voting age majority counties to create district-wide white voting age population majorities, thus diluting Black voting strength:

District	No. Reps.		% Black Pop.	% Black Voting Age Pop.
30	3	Claiborne	(74.58%)	71.34%
		Warren	(40.80%)	38.15%
		Total	(47.00%)	44.29%
15	4	Issaquena	(62.00%)	54.82%
		Washington	(54.50%)	49.17%
		Total	(54.80%)	49.38%

3B	1	DeSoto	(35.14%)	30.22%
		Marshall	(61.98%)	55.91%
		Total	(45.90%)	40.51% [1]
23	5	Lowndes	(32.70%)	27.87%
		Noxubee	(65.77%)	58.51%
		Oktibbeha	(34.79%)	26.23%
		Total	(38.40%)	31.56% [2]
29	2	Sharkey	(64.7%)	56.13%
		Yazoo	(53.4%)	47.64%
		Total	(56.20%)	49.59%
34	2	Amite	(50.44%)	42.09%
		Franklin	(38.81%)	33.43%
		Wilkinson	(67.56%)	62.67%
		Total	(53.40%)	46.56%

[1] Districts 3, 3A, and 3B constitute a floterial district, in which DeSoto County has one direct representative, Marshall County has one direct representative, and Marshall and DeSoto combined elect one representative in District 3B.

[2] District 23 is floterial, but Noxubee County is combined with Oktibbeha County to form a subdistrict.

In addition, in three other House districts, Black population majority counties (1970 Census) are combined with white population majority counties to create district-wide white population majorities:

District	No. of Reps.		% Black Pop.
9	2	Panola	51.36%
		Yalobusha	40.40%
		Total	47.9%
24	4	Kemper	54.84%
		Lauderdale	30.75%
		Total	33.9%
37	2	Jefferson Davis	50.22%
		Covington	32.60%
		Lawrence	32.14%
		Total	38.5%

In the 1975 House plan, the Court created single-member districts in two counties in which plaintiffs objected to at-large, countywide voting, Hinds and Madison, and single-member subdistricts in a floterial district in a third county, Harrison. At-large, countywide voting in the House districts created by the 1975 plan submerges substantial concentrations of Black population sufficiently large to be entitled to independent representation in single-member districts in seven additional counties. Black voting strength is diluted and cancelled out by countywide white voting majorities in Washington (see District 15, above), Bolivar, Coahoma, Leflore, Sunflower, Lauderdale, and Warren Counties.

In Lauderdale and Warren Counties, House Districts 24 and 30, Blacks have sufficient population to be entitled to separate representation in majority Black single-member districts, but these substantial Black population con-

centrations are cancelled out in the white countywide population majorities:

House District	County	White Pop.	% White	Black Pop.	% Black	Total Pop.
24	Lauderdale	46,186	68.84%	20,630	30.75%	67,087
30	Warren	26,474	58.85%	18,353	40.81%	44,981

According to 1975 projections of racial voting age population based on 1970 Census data (Ex. P-13), Blacks are only 47.34% of the voting age population in District 17, Carroll and Leflore Counties.

Further, Blacks do not have effective countywide voting majorities in House Districts 11 (Coahoma County), 13 (Sunflower County), or 14 (Bolivar County). The optimum Black vote in each of these districts (Barber testimony, Exs. P-30, P-31) is as follows:

District	No. of Reps.	County	Optimum Black Vote
11	2	Coahoma	49.3%
13	2	Sunflower	45.6%
14	3	Bolivar	44.0%

2. *Senate Plan.* Under the 1975 court-ordered Senate plan, eight counties which have Black majority voting age population are combined with white voting age population majority counties to create district-wide white voting age population majorities, thus diluting Black voting strength:

District	No. of Senators		% Black Pop.	% Black Voting Age Pop.
1	2	DeSoto	(35.14%)	30.21%
		Lafayette	(27.73%)	20.63%
		Marshall	(61.98%)	55.91%
		Total	(40.68%)	33.97%
9	1	Quitman	(57.40%)	50.16%
		Tate	(47.24%)	38.23%
		Tunica	(72.67%)	65.99%
		Total	(57.24%)	49.01%
14	1	Grenada	(43.77%)	37.43%
		Tallahatchie	(60.15%)	51.87%
		Total	(51.85%)	44.19%
18	1	Noxubee	(65.77%)	58.51%
		Oktibbeha	(34.79%)	26.23%
		Total	(45.08%)	36.03%
24	2	Claiborne	(74.58%)	71.34%
		Copiah	(50.25%)	43.41%
		Lincoln	(30.67%)	25.81%
		Simpson	(31.37%)	27.15%
		Total	(42.30%)	37.13%
25	2	Adams	(47.90%)	44.05%
		Amite	(50.44%)	42.09%
		Franklin	(38.81%)	33.43%
		Jefferson	(75.26%)	69.26%
		Wilkinson	(67.56%)	62.67%
		Total	(53.37%)	47.91%

In addition, in four other Senate districts, Black population majority counties are combined with white population majority counties to create district-wide population majorities:

District	No. of Senators		% Black Pop.
8	1	Panola	51.26%
		Yalobusha	40.40%
		Total	47.9%
16	1	Carroll	50.77%
		Attala	40.38%
		Leake	35.65%
		Total	40.7%
19	2	Kemper	54.84%
		Lauderdale	30.75%
		Total	33.9%
27	3	Jefferson Davis	50.22%
		Covington	32.60%
		Lawrence	32.14%
		Jones	24.50%
		Marion	31.05%
		Total	30.3%

3. *Alternatives.* The extent to which the 1975 court-ordered plan dilutes and cancels out Black voting strength may be shown in comparison with the other alternative plans proposed by plaintiffs and plaintiff-intervenor. In a State which is 36.9% Black, in the 1975 court-ordered House plan there are only 14 out of 84 House districts which are majority Black in voting age population (see Exhibit A, attached), and only 5 out of 39 Senate districts which are majority Black in voting age population (see Exhibit B, attached). Each of the single-member districting plans proposed by plaintiffs and plaintiff-intervenor

provides more districts which are majority Black in voting age population,[3] not to maximize Black voting strength or create "safe" Black majority seats, but to cure the dilution of Black voting strength present in multi-member districts and countywide voting:

	Black Majority VAP House Districts	Black Majority VAP Senate Districts
1975 Court Plan	14	5
Valinsky Plan	23	7
Kirksey Plan	26	7
State Modified Plan (Dept. Just.)	29	11

B. *Malapportionment.*

4. In the House plan, the variances from population equality range from +38.694% (District 4A, Monroe County and its share of the floater representative) to −24.269% (District 25, Newton County, and its share of the floater representative), for a total deviation from population equality in the House plan of 62.963% (see Exhibit C, attached). In the Senate plan, the variances from population equality range from +9.584% (District 29, George, Greene, Perry, and Wayne Counties) to −10.708% (District 27, Jones County, and its share of the floater senator), for a total deviation from population equality in the Senate plan of 20.202% (see Exhibit D, attached).

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[3] Statistics for the Valinsky and Kirksey Plans calculated by the Department of Justice and contained in their pleading, Statistical Analysis of Plaintiffs' Exhibits 19 & 20 (Valinsky Plan) and Plaintiffs' Exhibits 33 & 34 (Kirksey Plan), filed July 3, 1975. Statistics for the State Modified Plan also calculated by the Department of Justice, and contained in their pleading, Analysis of House Bill 1290 and Senate Bill 2976 by the United States.

In the House plan, 11 of the 84 districts vary from population equality by more than 10% plus or minus. These are:

District 1A	−12.090%
District 3	+23.508%
District 4A	+38.694%
District 4B	−21.000%
District 11	−14.160%
District 25	−24.269%
District 31I	−10.95%
District 35	+12.906%
District 42	−12.547%
District 45D	+32.662%
District 47	−13.114%

Thirty-three of the 84 districts vary from population equality by more than 5% plus or minus.

In the Senate plan, 19 of the 39 districts vary from population equality by more than 5% plus or minus.

5. There are literally hundreds of alternatives which the Court might have chosen which would have provided greater equality of population among the districts without breaking county lines. The 1973 Report of the Interim Study Committee provided districts with smaller deviations in the House of 14.7% and in the Senate of 12.8%. The computer analysis of Dr. Gordon G. Henderson, although incomplete in terms of providing single-member districts to offset dilutions of Black voting strength, nevertheless demonstrated that it is possible without breaking any county lines to provide legislative districts with deviations from population equality of 10.62% in the House and 10.51% in the Senate. The Court could have chosen either one of these feasible alternatives, or any other alternative providing greater equality of population, as a basis for drawing new districts and making adjustments to cure

dilution of Black voting strength, instead of the unconstitutional 1971 court-ordered plan which provides districts which are seriously malapportioned.

6. In addition, plaintiffs and plaintiff-intervenor presented to the Court three legislative redistricting plans providing single-member districts statewide which provide greater equality of population among the districts than the plan ordered into effect by the Court:

	House Deviation	Senate Deviation
1975 Court Plan	62.963%	20.202%
Valinsky Plan	5.39%	3.39%
Kirksey Plan	5.75%	5.01%
State Modified Plan (Dept. of Just.)	8.96%	19.68%

C. *Multi-Member Districts.*

7. Under the Supreme Court's ruling in this case and *Chapman* v. *Meier,* —— U.S. ——, 42 L.Ed.2d 766 (1975), single-member districts are preferred to multi-member districts in a court-ordered legislative reapportionment plan. The 1975 court-ordered plan contains an excessively large number of multi-member and multi-member floterial districts, and therefore violates *Chapman* principles. The multi-member districts (including floterial districts) in the House plan, and the number of representatives per district, are:

District(s)	No. of Reps.
1, 1A, 1B, (flot.)	3
2	2
3, 3A, 3B, (flot.)	3
4, 4A, 4B, 4C (flot.)	5
8	2
9	2

11, 11A, 11B (flot.)	4
13	2
14	3
15	4
16	2
17	3
18	2
23, 23A, 23B (flot.)	5
24	4
25, 25A, 25B (flot.)	3
26	2
27	2
28B	2
29	2
30	3
32	2
33	2
34	2
35, 35A, 35B (flot.)	3
37	2
38	2
39	4
40	3
43	2
45-45E (flot.)	7

Thus, 51 of the 84 districts created by the 1975 court order, electing 89 representatives out of 122, or 72.95% of the entire membership of the Mississippi House of Representatives, are multi-member districts.

The multi-member districts (including floterial districts) in the Senate plan, and the number of senators per district, are:

District(s)	No. of Senators
1	2
4	2
6	2
11	2
12	2
15	2
19	2
24	2
25	2
27, 27A, 27B (flot.)	3
30	2
32	3
33	2

Thus, 15 of the 39 senatorial districts are multi-member districts, electing 28 of the 52 senators, or 53.85% of the entire membership of the Mississippi Senate.

D. *Special Elections*

8. As indicated above, the Mississippi legislative districts as established by this Court's Order of July 11, 1975, dilute Black voting strength and are excessively malapportioned in violation of the constitutional rights of plaintiffs, the plaintiff class, and Mississippi voters generally. As a result of these constitutional violations, plaintiffs and their class will suffer immediate irreparable injury by the use of these districts for the 1975 state legislative elections. Unless the

relief requested is granted, plaintiffs and the Mississippi electorate generally will be forced to suffer unconstitutional interim legislative districts for another four years until the 1979 legislative elections. If these unconstitutional districts are permitted to stand for another four years, no one can have confidence in the democratic or judicial processes for obtaining redress of grievances. A specific and firm date for the ordering into effect of a permanent plan must be set by the Court, and special legislative elections must be required. The court-ordered plan ordered in 1971 was considered by the Supreme Court on appeal to be only an interim, temporary plan for the 1971 legislative elections only. Now the Court has ordered into effect for the 1975 legislative election the same plan, with changes in House districts only for Marshall, Hinds, Harrison, Jackson, Stone, and Perry Counties, and changes in Senate districts only for Hinds County. Under these circumstances, plaintiffs cannot wait until 1979 for the denial of their constitutional rights to be vindicated.

9. The United States Supreme Court frequently has ordered special elections as a remedy for racial discrimination in voting and for unconstitutional malapportionment. *Hadnott* v. *Amos*, 394 U.S. 358 (1969); *Toombs* v. *Fortson*, 241 F. Supp. 65, 71 (N.D. Ga. 1965) (three-judge court), aff'd, 384 U.S. 210 (1966); *Drum* v. *Seawell*, 249 F. Supp. 877, 881-82 (M.D. N.C. 1965) (three-judge court), aff'd 383 U.S. 831 (1966); *Mann* v. *Davis*, 238 F. Supp. 458 (E.D. Va. 1964) (three-judge court), aff'd sub nom. *Hughes* v. *WMCA*, 379 U.S. 694 (1965); *Moss* v. *Burkhart*, 220 F. Supp. 149 (W.D. Okla. 1963) (three-judge court), aff'd sub nom. *Williams* v. *Moss*, 378 U.S. 558 (1964).

Similarly, the United States Court of Appeals for the Fifth Circuit frequently has invoked the remedy for shortening the terms of office of officials elected under an unlawful election scheme, and provided for a special election once the legal defect has been removed. *Keller* v. *Gilliam*, 454 F.2d 55 (5th Cir. 1972); *Hall* v. *Issaquena County Bd. of Supervisors*, 453 F.2d 404 (5th Cir. 1971) (Order of July 29, 1971); *Howard* v. *Adams County Bd. of Supervisors*, 453 F.2d 455 (5th Cir. 1972) (Order of July 29, 1971); *Smith* v. *Paris*, 386 F.2d 979 (5th Cir. 1967); *Hamer* v. *Campbell*, 358 F.2d 215 (5th Cir. 1966). This remedy is in accord with the rulings of the Mississippi Supreme Court. As the Fifth Circuit has observed,

> "The Mississippi courts have also not been averse to the requiring of a new election when defects have necessitated the invalidating of the regularly scheduled election. See Ulmer v. Currie, 245 Miss. 285, 147 So.2d 286; Wallace v. Leggett, 248 Miss. 121, 158 So.2d 746; and Hayes v. Abney, 186 Miss. 208, 188 So. 533." *Taylor* v. *Monroe County Bd. of Supervisors*, 421 F.2d 1038, 1042 (5th Cir. 1970).

E. *Appointment of the Special Master.*

10. Plaintiffs object to the appointment of Mr. Hoyt T. Holland, Jr., as special master for the Court on grounds of (a) past inaccuracies in the calculation of population data in redistricting plans, and (b) the extensive prior history of Mr. Holland and his firm, Comprehensive Planners, Inc., in racial gerrymandering of the boundary lines of county supervisors' districts.

We have recalculated the population data submitted by Mr. Holland to the Court for his Hinds County single-member districting plan, using the block statistics provided by the U.S. Bureau of the Census. Computer cards were punched for each of the blocks within the City of Jackson using U.S. Census data, and these block cards were organized according to the new precincts and new House districts proposed by Mr. Holland. This check on the calculations performed by Mr. Holland suggests the following discrepancies in the data as calculated by Mr. Holland:

District	HOLLAND Total Pop.	% Deviation	% Black	COMPUTER Total Pop.	% Dev.	% Black
1 (31)	18,179	+0.03	0.5	18,135	— .19	0.38
2 (31A)	18,427	+1.40	4.9	19,091	+5.06	33.6
3 (31B)	17,793	—2.09	6.3	18,057	— .62	6.4
4 (31C)	17,362	—4.46	91.4	16,613	—8.61	90.4
5 (31D)	18,483	+1.71	83.8	18,124	— .26	83.86
6 (31E)	18,275	+0.56	49.4	16,518	—9.13	46.16
7 (31F)	18,722	+3.02	79.0	19,058	+4.88	76.1
8 (31G)	17,354	—4.51	9.0	17,480	—3.80	5.89
9 (31H)	18,030	—0.79	2.2	18,036	— .74	.8

The data from the computer run suggest that the true deviation from population equality in the Hinds County House districts is 16.01%.

Further, the total of the population of the 12 districts devised by Mr. Holland is 2,415 less than the total population of Hinds County.

Mr. Holland and his firm were employed by the boards of supervisors to provide county redistricting plans for, among others, Hinds, Warren, Yazoo, Leake, and Grenada Counties; and in each of those cases one or more Section 5 objections were lodged by the United States Attorney General on the grounds either that the population calculations were inadequate to determine whether Black voting strength was diluted or that the redistricting plan drawn by Mr. Holland and/or C.P.I. diluted Black voting strength (Ex. P-9, Pottinger dep., and deposition exhibits). The plaintiffs, and we suggest, the Court cannot have confidence in a special master or planning firm with such an extensive record of racial gerrymandering of supervisors' districts in Mississippi.

WHEREFORE, plaintiffs pray that their motion be granted.

Respectfully submitted,

/s/ FRANK R. PARKER

Frank R. Parker
HERMAN WILSON
Lawyers' Committee for
Civil Rights Under Law
233 North Farish Street
Jackson, Mississippi 39201
JOHN L. MAXEY, II
Pyles, Cupit & Maxey
507 East Pearl Street
Jackson, Mississippi 39201
Attorneys for Plaintiffs

Computation of Deviations from the Population Norm In Floterial Districts

In the July 11, 1975, court-ordered plan, there are Senate and House floterial districts, composed of subdistricts, each electing one or more legislators, and one or more floater legislators elected at large from all the subdistricts.

To show the method used to compute deviations in such districts, I shall begin by pointing out the procedure used in single-member or conventional multi-member districts.

In such districts, the legislator/constituent ratio is:
the number of legislators elected from the district, divided by the population of the district.

Or, in formula form:

$$\text{legislator/constituent ratio} = \frac{\text{\# of legislators}}{\text{pop. of district.}}$$

Thus in Bolivar County, for example (House District 14), where three representatives are elected by a total district population of 49,409:

$$\text{legislator/constituent ratio} = \frac{3}{49{,}409} = \frac{1}{16{,}470.}$$

This could be expressed as: In Bolivar County there is one representative for every 16,470 persons. It could also be expressed as: In Bolivar County, each person elects 1/16,470 of a representative. (We are using total population in these examples, of course. Strictly speaking, only members of the Voting Age Population "elect," and then only those who register and vote. We shall ignore that semantic distinction here.)

Residents of multi-member floterial districts play no part in electing the legislator(s) from the *other* subdistrict(s) in the floterial district. They elect the legislator(s)

from their own subdistrict; they also partially elect the floterial legislator(s). Thus the proper computation of their legislator/constituent ratio takes into account their subdistrict legislator(s) and also the portion of the floater legislator(s) which the residents of the subdistrict elect.

In floterial districts, the legislator/constituent ratio is:

the number of legislators elected from the subdistrict, divided by the population of the subdistrict,
plus
the number of floater legislators, divided by the population of the entire district.

Thus in Harrison County, for example (House District 45), where one representative is elected from Supervisor District 1 and two floater representatives are elected from the entire county at large, since Supervisor District 1 has an estimated population of 23,650 and the county population is 134,582, the formula would be:

$$\text{legislator/constituent ratio} = \frac{1}{23{,}650} + \frac{2}{134{,}582} = \frac{1}{17{,}499}$$

Again, this could be expressed as: In Harrison Supervisor District 1 there is one representative for every 17,499 persons. It could also be expressed as: each person elects 1/17,499 of a representative.

APPENDIX F

District Court Order Establishing Certain Temporary Districts for the Election of Senators and Representatives in the Mississippi Legislature for the Year 1975 Only. Filed July 11, 1975.

[Filed July 11, 1975]

CIVIL ACTION No. 3830(A)

PEGGY J. CONNOR, ET AL., *Plaintiffs,*

v.

WILLIAM L. WALLER, ET AL., *Defendants.*

ORDER ESTABLISHING CERTAIN TEMPORARY DISTRICTS FOR THE ELECTION OF SENATORS AND REPRESENTATIVES IN THE MISSISSIPPI LEGISLATURE FOR THE YEAR 1975 ONLY

COLEMAN, Circuit Judge:

This opinion represents a continuation of the efforts of this Court to devise a temporary reapportionment plan for the Mississippi Legislature in time for the holding of the regular 1975 Democratic primaries on August 5 and August 26.

Our prior order of June 25, 1975, and our opinion of July 8, 1975, are included in this opinion by reference.

In the opinion of July 8, 1975, we described the duties imposed upon this Court by the previous remands of the Supreme Court of the United States. We demonstrated the indisputable fact that the County has been, and is, the sole, inviolate, basic unit of state and local government in Mississippi. Incidental thereto, we further demonstrated that no county line in the 158 year history of Mississippi had ever been fractured for the purpose of erecting legislative districts, the uniform policy being to maintain the integrity of county boundaries. We held that in the observ-

ance of the one person-one vote rule this Court should respect that policy and should allow only the most compelling reasons to cause a departure from it.

We further demonstrated that from the beginning Mississippi has extensively used multi-member and multi-county legislative districts.

Moreover, we outlined Mississippi's three tiered election machinery (precinct-county-state) which render it impossible at this time and on short notice to re-register voters or realign voting precincts, the unavoidable result being that the 1975 elections will have to be conducted by this existing machinery, or not at all.

We now consider the last remaining issue in this legislative reapportionment situation—the objections raised by the original plaintiffs and by the Department of Justice to the 1971 court-ordered composition of various legislative districts on the ground that they impermissibly cancel, minimize, or dilute black voting strength.

Generally speaking, the two significant factors involved in impermissible dilution of black voting strength are: (1) a purpose to dilute, or (2) *resulting* dilution, even when not caused by a design to produce such a result.

Striving, as we are, for a court-ordered plan, there is no state action. Both the action and the results are court-conceived and court-caused.

When, after extended effort and labor, we formulated the 1971 reapportionment plan, we very deliberately said:

> "[W]e have cast to one side any purpose of discrimination or favoritism of any kind." 330 F.Supp. at 508.

It ought not to have to be said, but we say it nevertheless, that this Court, absolutely, has no intent, purpose, or design to deprive any citizen of the State of Mississippi

of the lawful weight of his individual vote, *and certainly not for racial reasons*. The question is thus narrowed to a determination of whether the temporary reapportionment plan to be ordered by us has the effect of diluting black voting strength, judged by appropriate legal standards.

As will be seen hereinafter we are changing some of the 1971 legislative districts for the reasons stated thereasto. As to those left unchanged we either find no dilution or no way to make a charge to meet the asserted dilution.

Our former opinion in this case, dated May 19, 1975, —— F.Supp. ——, found as a fact (reversed on other grounds) that in the electoral processes black citizens are not now suffering from the impact of past discrimination; that they are not hindered, hampered, or in any way impeded in registering to vote, or in voting, for candidates of their individual choice.

We there concluded:

> ' As a matter of fact, it is obvious that the Voting Rights Act of 1965 has effectually reduced all such racially discriminatory factors to what honestly may be determined an irreducible minimum."

In the present opinion, we include by reference, all of the facts and considerations set forth in the May 19 opinion negating the presence of racial discrimination in the electoral processes of this State.

At the hearing held in this Court subsequent to the most recent Supreme Court remand we expressly offered the parties an opportunity to submit further evidence on this subject. Including the Department of Justice, they all stated that they preferred to stand on the record as it existed at the time of our prior opinion. No further evidence was offered.

In the light of the foregoing, any possible dilution as to each individual legislative district and any resulting dilu-

tion as to the composition of either the House or Senate, as a whole, must be judged on whether, good purpose notwithstanding, the arrangement of the particular district and the state-wide result have the *effect* of dilution.

The standard was recently prescribed by the Supreme Court in City of Richmond, Virginia v. United States [No. 74-201, June 24, 1975], —— U.S. ——: In the newly constituted governmental unit blacks must be afforded the representation reasonably equivalent to their political strength. The test is not what existed before the change, but what prevails after the change.

In *City of Richmond*, the Court said:

> "As long as the ward system fairly reflects the strength of the Negro community as it exists after the annexation we cannot hold, without more specific legislative directions, that such an annexation is nevertheless barred by Section 5."

Moreover, we call attention to the teachings of Wallace v. House [No. 74-2654, slip opinion dated July 7, 1975] 5 Cir., 1975, —— F.2d ——, J. Goldberg:

> No racial or political group has a constitutional right to be represented in proportion to its numbers.
>
> No such group is constitutionally entitled to an apportionment structure designed to maximize its political advantage.
>
> The critical question is whether the challenged political system has a demonstrably adverse effect on the political fortunes of a particular group.
>
> Another critical question is whether the effect is invidiously discriminatory, that is, fundamentally unfair.
>
> The existence of a black population majority is not dispositive of the dilution issue, for it is not population

but access to the political process that determines whether an interest group enjoys the full vigor of its political rights.

We begin our analysis of the objections filed by the original plaintiffs and by the Department of Justice by identifying the twenty five counties in Mississippi which had a black majority population at the Census of 1970. Then, we shall examine the treatment given these black counties in the reapportionment which we ordered in 1971 and which the Legislature essentially adopted as its own in 1975.

This analysis has been given the most intensive attention, including a lengthy informal conference between the Court and respective counsel on July 7, 1975. In some instances the black population ratio of a particular district might be increased by certain alterations but these alterations would run afoul of the limitations imposed by population norms. An over-all deviation of more than twenty percent, in the absence of the most compelling reasons, was prohibited by the Supreme Court, Chapman v. Meier, —— U.S. ——, 95 S.Ct. 751, —— L.Ed. 2d —— (1975).

An added difficulty is that we could not effectively utilize the reapportionment *plans* offered by the plaintiffs and the Department of Justice in a workable manner because they simply cannot be made to conform, at this time, to the requirements of Mississippi registration and voting procedures. Moreover, to a large extent we must say in kindly candor that the objective of these plans, quite clearly, is to *maximize* black voting strength wherever it may be found. These *plans* would fragment the eighty two counties into several hundreds of small pieces, tacked together in a fashion designed, wherever possible, to establish election districts with black majorities. All this, of course, will have to be worked out during the course of the time which will be available when we come to developing a permanent plan.

An Analysis of Population Characteristics in Mississippi

Black Population Majority Counties According to the 1970 Census, Including 1960 Comparisons

County	White 1970	Black 1970	Black Majority	Black Loss 1960-70	White Population Change, 1960-70
Amite	6,814	6,942	128	1,548	— 316
Bolivar	18,750	30,338	11,588	6,325	+1,229
Carroll	4,615	4,771	156	1,721	— 62
Claiborne	2,536	7,522	4,986	717	— 64
Coahoma	14,232	26,013	11,781	5,427	— 398
Copiah	12,298	12,437	139	1,621	— 694
Holmes	7,345	15,743	8,398	3,745	— 250
Humphreys	5,089	9,460	4,371	3,840	— 669
Issaquena	1,033	1,698	655	701	— 143
Jefferson	2,296	6,996	4,700	656	+ 437
Jefferson Davis	6,435	6,497	62	911	+ 309
Kemper	4,488	5,612	1,124	1,600	— 340
Leflore	17,550	24,374	6,824	5,933	+ 851
Madison	11,148	18,548	7,400	5,082	+1,881
Marshall	9,101	14,891	5,790	2,348	+1,837
Noxubee	4,844	9,397	4,553	3,620	+ 120
Panola	13,061	13,753	692	2,463	+ 496
Quitman	6,867	9,120	2,253	4,134	— 848
Sharkey	3,125	5,784	1,659	1,685	— 122
Sunflower	13,619	23,261	9,642	7,594	— 111
Tallahatchie	7,657	11,632	3,975	3,768	— 923
Tunica	3,225	8,614	5,389	4,701	— 280
Washington	31,803	38,460	6,657	4,637	—3,436
Wilkinson	3,588	7,499	3,911	1,929	— 219
Yazoo	12,690	14,579	1,889	4,180	— 172

From the foregoing statistics we conclude that there is no reasonable likelihood that the following counties presently have a black population majority:

County	Black Majority 1970	Black Population Loss 1960-70	White Population Change 1960-70
Amite	128	1,548	−316
Carroll	156	1,721	− 62
Copiah	139	1,621	−694
Jefferson Davis	62	911	+309
Panola	692	2,463	+496

In addition, between 1960 and 1970 the following counties had black population losses amounting to nearly as much, or more, than the black population majority existing in 1970:

County	Black Population Majority 1970	Black Loss 1960-70
Humphreys	4,371	3,840
Issaquena	655	701
Kemper	1,124	1,600
Quitman	2,253	4,134
Sharkey	1,659	1,685
Tallahatchie	3,975	3,768
Tunica	5,389	4,701
Yazoo	1,889	4,180

For the purpose of this opinion, however, these eight counties will be considered as black majority. The five counties in the next preceding tabel no doubt have a high percentage of black population.

Between 1960 and 1970 the Counties of Clay, DeSoto, Jasper, and Tate changed from black population majorities to white.

AN ANALYSIS OF THE RACIAL COMPOSITION OF THE LEGISLATIVE DISTRICTS OF WHICH THE BLACK MAJORITY COUNTIES ARE A PART

(Listed alphabetically)

HOUSE OF REPRESENTATIVES

Amite County

Black majority 128 in 1970.

Amite County is in House District 34, which has an average population of seventeen persons per square mile, hemmed in by the Louisiana boundary on the South and by the Mississippi River on the West. District 34 is constituted as follows:

County	White	Black	Total
Amite	6,814	6,949	13,763
Franklin	4,837	3,174	8,011
Wilkinson	3,588	7,511	11,099
	15,239	17,634	32,873

Two Representatives, 16,436 per member. Black voting age population 46.6%, although the total black population is 53.4%.

Bolivar County

District 14. Black population majority 11,588. Black voting age population 51.9%. Elects three Representa-

tives. The Department of Justice says that this County could be divided into three single-member districts in such a fashion as to improve the chances of electing a black representative, but for lack of adequate data conforming to precinct lines this cannot now be done. The Courts expects to give the division of Bolivar County further study for the permanent plan.

Carroll County

District 17. Black population majority 156. Has approximately half enough people for one Representative. May no longer be a black majority county. Strong ties with Leflore County, black population majority 6,824. Carroll is combined with that County for the election of three Representatives. The district has black voting age population of 50.1%. With appropriate data the district should be susceptible to division, reducing its three member status.

Claiborne County

District 30. Black population majority 4,986. Has a little more than half enough people for one Representative. Adjacent to the Mississippi River. Claiborne is combined with Warren County, which has 41% black population.

County	White	Black	Total
Claiborne	2,536	7,511	10,058
Warren	26,010	18,355	44,365
	28,546	25,877	54,423

Claiborne might be joined with some identifiable portion of Warren County for a single-member district. However, by order of a three-judge court in a reapportionment case, Warren County presently has no validly existing Supervisor Beats. District 30 elects three Representatives.

Coahoma County

District 11. Black population majority 11,781. Elects two Representatives and participates in the election of a Floater with Quitman and Tunica, black majority counties. The Department of Justice does not object to this district. This area presents a reasonable opportunity for division into single-member districts.

Copiah County

District 32. Black population majority 139. Has 6,564 more than enough people to elect one Representative. Joined with Jefferson County for the election of two Representatives.

County	White	Black	Total
Copiah	12,298	12,437	24,735
Jefferson	2,296	6,996	9,292
	14,594	19,433	34,027

Black majority district-wide is 4,839. Elects two Representatives, one of whom must be a resident of Copiah County. District black voting age population 50.1%.

Holmes County

District 16. Black population majority 8,398. Joined with Humphreys County, black population majority 4,371, for the election of two Representatives, one of whom is black. Department of Justice does not object.

County	White	Black	Total
Holmes	7,345	15,743	23,088
Humphreys	5,089	9,460	14,549
	12,434	25,203	37,637

Humphreys County

See Holmes County, immediately above.

Issaquena County

District 15. Has 2,737 people, one-seventh of the number required for a Representative. Black majority 655. Joined with Washington County, which has a black majority of 6,657. Elects four Representives. See Washington, below.

Jefferson County

See Copiah County, *supra.*

Jefferson Davis County

District 37. County had black majority of 62 as of 1970. Adjacent to no black majority county. Has 12,396 people, two-thirds enough for one Representative. Joined with white majority counties of Covington and Lawrence for the election of two Representatives. Because of the population norm cannot be joined to another county for the election of one Representative. The Department of Justice suggests that the county boundaries of Covington and Lawrence should be fractured to tailor a heavier black population.

Kemper County

District 24. Has approximately half enough people to elect one Representative. Black majority 1,124. For a discussion of the situation in which this County finds itself, see below.

Leflore County

See Carroll County, above.

Madison County

Like Marshall County, Madison County, presently in District 28, is joined with a much larger County, Rankin, but for the election of four Representatives.

County	White	Black	Total
Madison	11,148	18,548	29,696
Rankin	31,529	12,354	43,883
	42,677	30,902	73,579

Obviously, it may reasonably be argued that there is a potential for dilution in this combination. Without now finally deciding the issue of whether county lines may generally be fractured in Mississippi, a question we reserve for the formulation of the permanent plan, we shall order for the 1975 elections that District 28 be rearranged as follows:

District 28. Madison County, Beats 1, 4, and 5. One Representative.

District 28 A. Madison County, Beats 2 and 3. Rankin County, Beat 2. One Representative.

District 28 B. Rankin County, Beats 1, 3, 4, and 5. Two Representatives. Posts 1 and 2.

Marshall County

District 3. Marshall County has 24,027 people. This is 5,856 more than enough to elect one Representative. The County has a black majority of 5,790. It is presently joined with much larger DeSoto, a white majority county, for the election of three Representatives at large.

	White	Black
Marshall	9,101	14,891
DeSoto	23,235	12,611
	32,336	27,502

Since Marshall County is entitled to elect one Representative, is a black majority County, and is submerged with a much larger white majority county for the election of Representatives at large, it is obvious that its power to elect one Representative from a black majority county has been diluted.

This District will be reconstituted as follows:

District 3. DeSoto County, one Representative

District ? A. Marshall County, one Representative

District 3 B. DeSoto and Marshall (Flotorial District) one Representative.

Noxubee County

District 23. See discussion below.

Panola County

District 9. Black majority 692 in 1970. As shown above, Panola County is now most likely a white majority county. The present legislative districting with Yalobusha, a white majority county, required that one of the Representatives be a resident of Panola County and permits the second one to be from that County also. Unlike Marshall County, Panola has not been joined with a larger county. Panola County has 26,829 people. Yalobusha has 11,915. In the first primary for the election of State and County officers in 1971, Panola County polled 8,901 votes while Yalobusha County polled 5,338. There is no real potential for invidious dilution of black voting strength in this combination of counties.

Quitman County

District 11. Black majority 2,253. See Coahoma County, above. Joins Tunica for the election of one Representative and participates in the election of a Floater.

Sharkey County

District 29. Black majority 1,659. Joined with Yazoo, black majority 1,889, for the election of two Representatives. District has 49.8% black voting age population.

Sunflower County

District 13. Black majority 9,642. Elects two Representatives. The Department of Justice does not object to this district for racial voting strength dilution.

Tallahatchie County

District 12. Black majority 3,975. Elects one Representative.

Tunica County

District 11. Population 11,839. Black majority 5,389. Combined in a black majority district for the election of one Representative with Quitman and with Coahoma and Quitman for the election of a Floater.

Washington County

District 15. Black majority 6,657. Joined with Issaquena County (population 2,737, formerly a part of Washington) for four Representatives. In the formulation of a permanent plan, with adequate data, this district should include some, if not all, single-member districts. This, however, will result in some white majority districts. The black voting age population of this district is 49.4%.

Yazoo County

District 29. Black majority 1,889. Included with Sharkey County in a black majority district. See Sharkey County, above.

Kemper and Noxubee Counties

The proper slot for the reapportionment of these Counties has given the Court much concern. After much effort, our hope of adjusting these counties has, for the time being, accomplished nothing. These are the only two black majority counties in East Mississippi. On its South side Noxubee joins Kemper. On their East sides both Counties join Alabama.

Noxubee County in 1970 had 14,288 people, of whom 9,397 were black. From 1890 to 1963 it had three Representatives, three times its share under one person-one vote. From 1963 to 1972 it had one Representative. After 1972, due to the loss of 3,620 black people and a white gain of only 120, it fell to two-thirds of one Representative. It now has only one-third of the population for a Senator. The necessity for combining it with other territory is obvious.

From 1890 to 1963, Kemper County had two Representatives. In 1967 it was combined with Neshoba County for the election of two Representatives. After it lost 1,600 black people and 340 whites between 1960 and 1970, this arrangement would no longer meet the required norms, so something else had to be done. Kemper now has a little more than half enough people to elect a Representative. The combined population of Kemper and Noxubee is

Kemper	10,233
Noxubee	14,288

This is 13.5% above the population norm and, in relation to norms elsewhere, these Counties may not be consolidated in one district. Such a shift would also cause serious distortions elsewhere.

Noxubee County is now combined with Oktibbeha County for the election of a Senator and for the election of two Representatives. As to the election of a Representative,

this is not satisfactory because Oktibbeha County has 28,752 people, twice that of Noxubee. Noxubee is 65.77% black, Oktibbeha is 65.21% white.

Kemper County is 54.84% black and is combined in a four Representative district with Lauderdale, with one of the four being required to be a resident of Kemper. The size of this district must be reduced.

The legislative district status of these two geographically isolated black counties was the subject of extended discussion in the informal court-counsel conference of July 7, 1975. The Court, of its own motion, had conducted an intensive investigation in an effort to better adjust the situation by fracturing county lines in Oktibbeha, Lowndes, and Lauderdale Counties. This proved fruitless because of impermissible distortion of population norms. All possible alternatives were discussed in the conference. No presently viable plan was suggested.

We have concluded that there are no presently viable answers to this peculiar situation, so we leave it as it is, with top priority when we come to consider the permanent plan. The only answer we now see is to take a census of the population of the voting precincts in Southern Oktibbeha, Southwestern Lowndes, and Northern Lauderdale Counties, from which the solution to the Kemper-Noxubee situation can be worked out. This can be had from the Department of Census and we have no doubt that, to resolve this presently insoluble situation, the Legislature would be willing to finance it. The Department of Justice is hereby requested to ascertain the cost of such a census and to report to this Court.

The remaining objections raised as to *white majority areas* which conceivably could be carved up so as to encompass isolated instances of heavy black population are not well taken. This approach would be a racially motivated gerrymander. Some of these areas, however, quite obviously can be divided into single-member districts with-

in the same county or with a minimum fracturing of county boundaries, without sacrificing the essential elements of a viable legislative district. This is a task awaiting court and counsel alike.

In resolving this reapportionment tangle, it should not be overlooked that according to the 1970 Census 67% of the white population of Mississippi are of voting age while only 53% of the blacks are eighteen years of age or older. This 14% differential in racial voting age patterns tends, of course, to distort conventional racial voting age statistics. In any event, one person-one vote reapportionment procedures count people, not just "voting age" people.

The above analysis demonstrates, however, that under the temporary plan no black majority county has been combined for the election of Representatives with a larger County containing a white population majority except in those rare instances where realities place a remedy presently out of reach.

Objections to the Senate Plan

The population norm for a Senate District is 42,633, more than twice that of a House District. This, of course, narrows the geographical options.

District 1

	White	*Black*
DeSoto	23,235	12,611
Marshall	9,101	14,981
Lafayette	17,313	6,705
	49,649	34,297

Marshall County adjoins Tennessee. So does DeSoto. Lafayette is the first county south of Marshall. Marshall

County has a little more than one half the people required for a Senator. Its location in this district is rationally dictated by geography.

District 6

This is a three county district, but none of the three is a black majority county.

District 8

The objections to District 8 are controlled by the considerations appearing heretofore in our discussion of the Panola-Yalobusha Representatives district.

District 9

	White	*Black*
Quitman	6,867	9,120
Tate	9,777	8,760
Tunica	3,225	8,614
	19,869	26,494

District 10

Coahoma	14,232	26,013

District 11

Bolivar	18,750	30,338
Sunflower	13,619	23,261
	32,369	53,599

District 12

Humphreys	5,089	9,460
Washington	31,803	38,460
	36,892	47,920

District 13

	White	*Black*
Leflore	17,550	24,374

District 14

Grenada	11,154	8,690
Tallahatchie	7,657	11,632
	18,811	20,322

District 15

Holmes	7,345	15,743
Issaquena	1,033	1,698
Madison	11,148	18,548
Sharkey	3,125	5,784
Yazoo	12,690	14,579
	35,341	56,352

This district elects two Senators. The population variations between the various counties are such that the counties cannot be divided into two districts and stay within permissible norms.

District 16

Carroll County is the only black majority county in this three county district and the majority is only 156. Carroll County has only one-fourth of the population required to elect a Senator.

Districts 18 and 19

Noxubee and Oktibbeha Counties have been discussed in connection with the House of Representatives, as have Kemper and Lauderdale Counties.

District 23

Warren County elects one Senator.

District 24

	White	*Black*
Claiborne	2,536	7,522
Copiah	12,298	12,437
Lincoln	26,198	18,138
Simpson	19,947	13,678
	60,979	51,775

The two black majority counties in this district, Claiborne and Copiah, have 7,000 too few people for a Senator. However, they are combined for the election of two Representatives.

District 25

	White	*Black*
Adams	19,366	17,927
Amite	6,814	6,949
Franklin	4,837	3,174
Jefferson	2,296	6,999
Wilkinson	3,588	7,511
	36,901	42,560

This black majority district elects two Senators. We see no racial dilution here, certainly not enough danger of it to justify altering the district within less than thirty days of the election.

EFFECTS OF THE TEMPORARY PLAN, STATEWIDE

For a general discussion of this factor see our prior opinion dated May 19, 1975. The 1970 population of Mississippi was 63.4% white and 36.9% black.

Under the temporary plan now being ordered into effect for the 1975 elections, fourteen Senators (26%) will be elected from districts having a black population majority.

Thirty Representatives (25%) will be elected from House districts having a black population majority.

In addition not less than 13 Senators and 46 Representatives will be elected from districts containing a black population ranging from 36 to 50%.

Seventy six of the 122 House members and 27 of the 52 Senate members will thus be chosen from districts having a black population of 36% or more.

DECREE

In the light of the foregoing it is hereby ordered, adjudged, and decreed that members of the House of Representatives and the Senate of the State of Mississippi shall be elected in the regular quadrennial elections in the year 1975 only, as follows, to-wit:

Mississippi State Senate

District Number	County or Counties	Number of Senators
1	DeSoto, Layfayette and Marshall	2
2	Benton, Pontotoc, and Union	1
3	Alcorn and Tippah	1
4	Itawamba, Monroe, Prentiss, and Tishomingo	2
5	Lee	1
6	Chickasaw, Clay and Lowndes	2
7	Calhoun, Choctaw, Montgomery and Webster	1
8	Panola and Yalobusha	1
9	Quitman, Tate and Tunica	1
10	Coahoma	1
11	Bolivar and Sunflower	2
12	Humphreys and Washington	2

13	Leflore	1
14	Grenada and Tallahatchie	1
15	Holmes, Issaquena, Madison, Sharkey and Yazoo	2
16	Attala, Carroll and Leake	1
17	Neshoba and Winston	1
18	Noxubee and Oktibbeha	1
19	Kemper and Lauderdale	2
20	Newton and Scott	1
21	Rankin	1
22	Hinds County Supervisor District 1	1
22 A	Hinds County Supervisor District 2	1
22 B	Hinds County Supervisor District 3	1
22 C	Hinds County Supervisor District 4	1
22 D	Hinds County Supervisor District 5	1
23	Warren	1
24	Claiborne, Copiah, Lincoln and Simpson	2
25	Adams, Amite, Franklin, Jefferson and Wilkinson	2
26	Pike and Walthall	1
27	Jones	1
27 A	Covington, Jefferson Davis, Lawrence and Marion	1
27 B	Covington, Jefferson Davis, Jones, Lawrence and Marion (Flotorial District)	1
28	Clarke, Jasper and Smith	1
29	George, Greene, Perry and Wayne	1
30	Forrest, Lamar and Stone	2
31	Hancock and Pearl River	1
32	Harrison	3
33	Jackson	2

House of Representatives

District Number	County or Counties	Number of Representatives
1	Alcorn	1
1 A	Benton and Tippah	1
1 B	Alcorn, Benton and Tippah (Floater District)	1
2	Prentiss and Tishomingo Post 1 shall be filled by a resident of one county, while Post 2 shall be filled by a resident of the other county.	2
3	DeSoto	1
3 A	Marshall	1
3 B	DeSoto and Marshall (Floater District)	1
4	Lee Posts 1 and 2	2
4 A	Monroe	1
4 B	Itawamba	1
4 C	Itawamba, Lee and Monroe	1
5	Chickasaw	1
6	Pontotoc	1
7	Union	1
8	Calhoun and Lafayette Posts 1 and 2 Post 1 shall be filled by a resident of Lafayette County.	2
9	Panola and Yalobusha Posts 1 and 2. Post 1 shall be filled by a resident of Panola.	2
10	Tate	1
11	Coahoma Posts 1 and 2	2
11 A	Quitman and Tunica	1
11 B	Coahoma, Quitman and Tunica	1

12	Tallahatchie	1
13	Sunflower Posts 1 and 2	2
14	Bolivar	3
15	Issaquena and Washington	4
16	Holmes and Humphreys	2
17	Carroll and Leflore	3
18	Grenada and Montgomery	2
19	Attala	1
20	Winston	1
21	Choctaw and Webster	1
22	Clay	1
23	Lowndes Posts 1 and 2	2
23 A	Oktibbeha and Noxubee Posts 1 and 2 Post 1 shall be filled by a resident of Oktibbeha.	2
23 B	Lowndes, Noxubee and Oktibbeha, Floater District	1
24	Kemper and Lauderdale Posts 1, 2, 3, and 4 Post 4 shall be filled by a resident of Kemper County.	4
25	Newton	1
25 A	Clarke and Jasper	1
25 B	Newton, Clarke and Jasper (Flotorial District)	
26	Leake and Neshoba Posts 1 and 2 Post 1 shall be filled by a resident of Neshoba; Post 2 shall be filled by a resident of Leake.	2
27	Scott and Smith Posts 1 and 2 Post 1 shall be filled by a resident of Scott, Post 2 shall be filled by a resident of Smith.	2

28	Madison County Beats 1, 4, and 5	1
28 A	Madison County, Beats 2 and 3 Rankin County, Beat 2	1
28 B	Rankin County, Beats 1, 3, 4, and 5 Posts 1 and 2	2
29	Sharkey and Yazoo Posts 1 and 2 Post 1 shall be filled by a resident of Yazoo.	2
30	Claiborne and Warren Posts 1, 2 and 3	3
	Hinds County is divided into 12 single member districts, as follows:	
31	Precincts 17, 35-38, 42-45, Twin Pines	1
31 A	Precincts 27, 29, 39-41, 79-83, Liberty Grove	1
31 B	Precincts 1, 5, 6, 8, 9, 14-16, 32-34	1
31 C	Precincts 12, 13, 21-23, 28, 30	1
31 D	Precincts 2, 4, 10, 11, 18, 19, 50	1
31 E	Precincts 20, 31, 52, 55-57, 61	1
31 F	Precincts 47, 51, 53, 58, 63, 64, 66	1
31 G	Precincts 24-26, 54, 59, 60, 62, 67-69	1
31 H	Precincts 49, 70-77	1
31 I	Precincts Bolton, Brownsville, Clinton 1, Clinton 2, Clinton 3, Clinton 4, Cynthia, Flag Chapel, North Clinton, Pocahontas, Presidential Hills, Tinnin	1
31 J	Precincts Cayuga, Edwards, Fairfax, Hickory, Learned, Midway, Raymond 1, Raymond 2, Van Winkle 1, Van Winkle 2	1
31 K	Precincts Briarcliff, Byram, Chapel Hill, Dry Grove, Forest Hill, Old Byram, Red Hill, Terry, Utica 1, Utica 2, Woodville Heights	1
32	Copiah and Jefferson Posts 1 and 2	2

	Post 1 shall be filled by a resident of Copiah County.	
33	Adams Posts 1 and 2	2
34	Amite, Franklin and Wilkinson	2
35	Pike	1
35 A	Lincoln	1
35 B	Lincoln and Pike (Flotorial)	1
36	Simpson	1
37	Covington, Jefferson Davis and Lawrence Posts 1 and 2	2
38	Marion and Walthall Posts 1 and 2	2
39	Forrest and Lamar Posts 1, 2, 3, and 4	4
40	Jones Posts 1, 2 and 3	3
41	Wayne	1
42	Perry County Greene County, Supervisor Districts 1, 2, 3 and 5	1
43	Pearl River County Stone County, Supervisor Districts 1, 2, 3 and 4	1
44	Hancock County	1
45	Harrison County Supervisor District 1	1
45 A	Harrison County Supervisor District 2	1
45 B	Harrison County Supervisor District 3	1
45 C	Harrison County Supervisor District 4	1
45 D	Harrison County Supervisor District 5	1

45 E	Harrison County At Large, Posts 1 and 2	2
46	Jackson County Supervisor District 1	1
46 A	Jackson County Supervisor District 2	1
46 B	Jackson County Supervisor District 3	1
46 C	Jackson County Supervisor District 4	1
46 D	Jackson County Supervisor District 5	1
47	George County Greene County Supervisor District 4 Stone County Supervisor District 5	1

The June 5, 1975 deadline for the qualification of candidates to run for the State Senate and for the House of Representatives is not extended in those districts the identities of which have not been changed from that existing as of June 5. Those qualified on June 5 shall remain qualified in the district in which they still reside as of the effective date of this order.

In all newly formed House and Senate districts, candidates desiring hereafter to qualify shall do so no later than 5 p.m. CDST, Monday, July 21, 1975. The deadline for qualification of candidates for the Senate from the newly formed districts in Hinds County stands as prescribed in our order of June 25, 1975, to-wit: 5 p.m., July 7, 1975.

This opinion shall constitute our Findings of Fact and Conclusions of Law as herein set forth.

It is further ordered, adjudged and decreed that within ninety days of this date, the parties hereto shall file with

the Clerk of this Court plans for the permanent reapportionment of the Legislature.

The first plan shall be for minimum practicable deviations from population norms without fracturing county boundaries. An alternative plan shall provide for minimum fracturing of county boundaries, in which no county shall be divided more than once, and no more than two fractured counties shall be placed in the same district. Any proposed fracture shall state if it is required to avoid dilution of black voting strength.

The alternate plans shall adhere as nearly as possible to precinct and beat lines. Thirdly, the parties may submit plans of their own composition consistently with their view of the law. The required plans may omit details as to representation from Kemper, Lauderdale, Lowndes, Noxubee and Oktibbeha counties, which are to be made the subject of special fact finding by the Court. All plans shall be accompanied by appropriate population data, calculations as to deviations from the norm, racial composition, etc.

Hoyt T. Holland, Jr. is hereby designated to serve hereafter as special master in this case, to serve under our orders and directions.

So Ordered, Adjudged, and Decreed, this the 11 day of July, 1975.

/s/ James P. Coleman
James J. Coleman
United States Circuit Judge

/s/ Dan M. Russell, Jr.
Dan M. Russell, Jr.
Chief United States District Judge

/s/ Harold Cox
Harold Cox
United States District Judge

APPENDIX

COMPOSITION OF HINDS COUNTY DISTRICTS

District	Population	% Black	% Deviation
31	18,179	0.5	+0.03
31 A	18,427	4.9	+1.40
31 B	17,793	6.3	−2.09
31 C	17,362	91.4	−4.46
31 D	18,483	83.8	+1.71
31 E	18,275	49.4	+0.56
31 F	18,722	79.0	+3.02
31 G	17,354	9.0	−4.51
31 H	18,030	2.2	−0.79
31 I	16,184	*	−10.95
31 J	16,872	*	−7.16
31 K	16,877	*	−7.13

Districts 31 I, J, and K are outside the city of Jackson.

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* No basis exists on which an accurate racial percentage can be computed for these precincts.

APPENDIX G

Docket Entries, Connor v. Waller (formerly Johnson), Civil No. 3830, S.D. Miss., Filed October 19, 1965.

Date; Filings—Proceedings.

10-19-65—Complaint, original and eight copies, filed.

10-19-65—Summons, original and five copies, copies having attached thereto copy of complaint, issued and handed U. S. Marshal.

10-19-65—Copy of complaint mailed to Judge Harold Cox.

10-27-65—Designation of Hon. James P. Coleman, United States Circuit Judge, Hon. Dan Monroe Russell, Jr., United States District Judge for the Southern District of Mississippi and Hon. William Harold Cox, United States District Judge for the Southern District of Mississippi signed by Judge Elbert P. Tuttle, Chief Judge of the United States Court of Appeals for the Fifth Circuit, to hear and determine the action, filed and entered OB, 1965, Page 1040.

10-28-65—Copy of above Designation mailed to Judge Cox.

10-28-65—Copies of the Complaint filed 10-19-65 and copy of the above Designation filed October 27, 1965 mailed to Judges Coleman and Russell.

10-29-65—Marshal's Return on Summons executed, filed.

11-6-65—ORDER: for good cause shown on Motion, defendants are granted 45 additional days within which to make defense to this cause in any manner permitted by the Federal Rules of Civil Procedure, filed and entered OB, 1965, Page 1052.

11-8-65—Copies of above Motion and Order filed 11-6-65 transmitted to Judges Coleman, Cox and Russell.

12-3-65—Motion of Plaintiff for a hearing on their application for preliminary injunction as soon as possible and in any event prior to January 4, 1966, the date the Mississippi legislature will convene in regular session, with certificate of service, filed.

12-6-65—Copies of the above Motion mailed to Judges Coleman, Russell and Cox.

12-17-65—Defendants' Motion to Drop Party, with certificate of service, filed.

12-17-65—Defendants' Motion to Strike and Alternative Motion for More Definite Statement, with certificate of service, filed.

12-17-65—Defendants' Motion to Dismiss and Alternative Plea in Abatement, with certificate of service, filed.

12-18-65—Copies of above Motions filed 12-17-65 mailed to Judges Russell, Coleman and Cox.

12-29-65—Notice of call for setting three-judge cases on January 7, 1966 at 2:00 P.M., at Jackson, Miss., mailed to attorneys of record.

4-18-66—Motion of L. H. Rosenthal, attorney of record, to withdraw as counsel for plaintiffs, with certificate of service and notice, filed.

4-18-66—Copy of above motion mailed to three judges.

5-17-66—Order granting L. H. Rosenthal leave to withdraw as counsel on the motion filed 4-18-66, filed and entered O.B. 1966 Page 349. (Copies mailed to attorneys, also copies mailed to 3 Judges.)

6-22-66—Notice of trial at Jackson, Miss. at 9:00 A.M. on July 15, 1966, together with calendar, mailed by registered mail, return receipt requested.

6-24-66—Return registered receipts signed by certain parties received in this office; showing that addressees

received copy of Notice of Trial mailed them 6-22-66, filed.

7-1-66—Defendants Motion for Summary Judgment with Exhibits "A" and "B", certificate of service and notice of hearing on July 15, 1966, at 9:00 A.M., Jackson, Miss., or as soon thereafter as possible, filed.

7-1-66—Attorney Martin R. McLendon advised that copies of above motion were mailed to three judges from his office.

7-7-66—Notice of Appearance of R. Jess Brown as attorney of record for plaintiff, with certificate of service, filed.

7-12-66—Defendants' Answer, with Certificate of Service
** filed.

7-13-66—Plaintiffs' Amendment to Complaint, with Certificate of Service, filed.

7-13-66—Copies of the above Answer, filed July 12, and
** Amendment to Complaint, filed July 13, mailed to three judges.

7-12-66—Defendants' Motion to continue this case heretofore set for trial on July 15, 1966, and reset for trial at a later date, with notice of hearing on July 15, 1966, at 9:00 A.M., in the U.S. District Courtroom at Jackson, Miss., with attachments and Certificate of Service, filed.

7-12-66—Defendants' motion for the Court to determine by Order, as provided by Rule 23, Fed. Rules Civ. Proc., as amended February 28, 1966, effective July 1, 1966, whether the entire action is to be maintained as a class action and if so, whether notice should be given to members of the class, with notice of hearing on July 15, 1966, at 9:00 A.M., in the U.S. District Courtroom, Jackson, Miss., with Certificate of Service, filed.

7-15-66—Defendants' Answer to New Allegations with certificate of service, filed. (Copies handed three judges in courtroom).

7-15-66—Sworn affidavit of Thompson McClellan, filed. (Copies handed three judges in courtroom).

7-15-66—EXHIBITS: Received and filed Plaintiff's 1 thru 13. (Copies made for three judges) (THE EXHIBITS ARE ON A SHELF IN THE EXHIBIT ROOM).

7-22-66—FINDINGS OF FACT AND CONCLUSIONS OF LAW: "In the event the Legislature does not enact an acceptable plan on or before December 1, 1966, this Court will proceed with its own plan by which the new legislators and senators are to be elected. That which has herein appeared shall constitute the findings of fact and conclusions of law in this case, and an order accordingly will be prepared and entered by the Court. Any motion, plea, or pleading not herein disposed of may be considered as left pending the final Judgment in the cause, and, as already stated, we do not here deal with the matter of Congressional Redistricting.", filed.

7-22-66—ORDER Directing Reapportionment of the Senate and the House of Representatives of the Legislature of the State of Mississippi, filed and entered OB 1966, Pages 473, 474 and 475.

7-22-66—Copies of Findings of Fact and Conclusions of Law and above Order mailed to Hon. Joe T. Patterson, Hon. R. Jess Brown, the Secretary of the State Senate and the Clerk of the House of Representatives.

7-25-66—Motion for certain documentary material offered into evidence, requested by the Court at the conclusion of the hearing on the merits on July 15, 1966; be admitted into evidence as exhibits subject to such objections as may appear of record in said depositions,

and subject to the ruling of the Court, with certificate of service, filed in triplcate.

8-4-66—Motion by defendants for admission into evidence of certain documents with Notice of Motion and certificate of service, filed.

8-4-66—Defendants Motion objecting to the admission into evidence of certain documents offered by motion of plaintiffs filed on July 25, 1966, with notice of Motion and Certificate of service—filed

8-15-66—Deposition of Charles M. Hills (Original and three copies) taken July 22, 1966 at Jackson, Miss.—filed

8-15-66—Deposition of James S. Saggus (Original and three copies) taken July 22, 1966 at Jackson, Miss.,—filed

8-15-66—Deposition of J. Harold Flannery (Original and three copies) taken July 22, 1966 at Jackson, Miss. with exhibits—filed.

8-15-66—Court Report's transcript of Stipulation (original and three copies) taken July 22, 1966 at Jackson, Miss., with one set of exhibits—filed

8-15-66—Stipulation of Parties with Exhibits 1 and 2 (original and three copies)—filed

9-30-66—PER CURIAM OPINION: "That which has herein appeared shall constitute the findings of fact and conclusions of law in this case, and an order accordingly will be prepared and entered by the Court.", with attachment, filed. (Anne Crews advised that copies of Opinion mailed to attorneys by Judge Coleman's secretary)

9-30-66—FIRST FINAL JUDGMENT: Order approving and adjudging House Bill No. 911, Mississippi Laws 1966 to be valid and proper and dismissing claim of the

plaintiffs attacking validity thereof with prejudice at plaintiff's cost; This court reserves and retains full jurisdiction of the claim involving reapportionment of the Legislature of Mississippi pending special session of the Legislature, filed and entered OB 1966, Pages 693 and 694. (Copies mailed attorneys) (Anne Crews advised that she mailed copies to judges on 9-26-66)

10-28-66—Plaintiffs' Notice of Appeal to the United States Supreme Court from Judgment entered 9-30-66, with certificate of Service, filed.

10-31-66—Copies of Notice of Appeal mailed three judges.

10-28-66—Cash bond on appeal in the amount of $250.00, filed.

12-2-66—Order for Briefing Toward Disposition of Case: ordered that plaintiffs file their brief on their contentions as to the validity of such newly enacted state legislation and to deliver copies of such brief to the members of this Court and to the opposition on or before noon on 12-17-66; defendants are ordered to file their brief and to deliver copies of such brief to the members of this Court and to the opposition on or before noon 12-27-66; the plaintiffs may respond to such brief in like manner on or before noon on 12-31-66; the Clerk of this Court shall notify counsel for both sides today of this order and send them a copy thereof, filed and entered OB, 1966, Page 905.

12-2-66—At the direction of Miss Anne Crews, Mr. Alvin Bronstein and Mr. Martin McLendon and were read the Order filed 12-2-66; Judge Russell was handed a copy and Judge Coleman was mailed a copy. After Mr. Bronstein and Mr. McLendon were called they both requested that they come by and pick up the Order rather than have it mailed—which they did.

2-16-66—Brief of Plaintiffs, filed.

2-16-66—Plaintiffs' Motion to Amend Complaint, filed.

2-17-66—Order allowing amendment to complaint as set out in plaintiff's amendment to complaint, filed and entered O. B. 1966, page 941.

2-19-66—Copy of above order mailed attorneys.

12-17-66—Plaintiffs' Amendment to Complaint, with Certificate of Service, filed.

2-17-66—Certificate of Service by plaintiffs' attorney, showing service of a copy of the Brief of Plaintiffs on defendants' attorney, filed.

2-20-66—Copy of Amendment to Complaint mailed to three Judges.

2-23-66—Plaintiffs' Motion for extension of time to complete the docketing of the appeal with the Supreme Court of the U. S. up to and including January 23, 1967, and certificate of service, filed.

2-27-66—Orders that the time for the docketing of the above-captioned case with the Supreme Court of the United States, the filing of the jurisdictional statement and all matters ancillary thereto be and it hereby is extended up to and including January 23, 1967, filed and entered up to and including January 23, 1967, filed and entered OB 1966, page 952.

1-4-67—Copy of Reply Brief of Plaintiffs, signed by R. Jess Brown and Alvin J. Bronstein—filed, pursuant to order of Court.

1-9-67—Defendants' Answer to New Allegations, with certificate of service, filed.

1-9-67—Copy of above Answer to New Allegations handed to each of the three judges.

1-10-67—Exhibits: D-1 through D-3, filed.

1-10-67—Order: The defendants are afforded an opportunity and are invited within five days after this date to articulate the reasons for the variations and disparities appearing on the face of the legislative enactment in suit. A copy of this order shall be served by the United States Marshal on the Attorney General of Mississippi as due notice hereof today, filed and entered OB 1967 Pages 17 and 18.

1-10-67—At the direction of Ann Crews copies mailed to Judge Russell, Martin McLendon and Alvin Bronstein.

1-10-67—Anne Crews handed Judge Coleman copy of Order and kept a copy for Judge Cox.

1-10-67—Two certified copies of Order to Show Cause handed to U. S. Marshal to be served on Attorney General of Miss., pursuant to this Order.

1-12-67—Marshal's return on Order to show cause, executed, filed.

1-13-67—Argument by Plaintiff's Counsel with Court Reporter's certificate, filed.

1-16-67—Response to show cause order, with certificate of service filed.

1-16-67—Copy of above Order delivered to Alvin Bronstein.

1-18-67—Copies of Senate Bill 1501 through 1505, addressed to Gov. Paul E. Johnson on 11-10-66 to Extraordinary Session of Mississippi Legislature; Amendments to Senate Bills 1501 through 1505; Senate Concurrent Resolution No. 101-107 with attachments; with certificate of Havis Sartor, Secretary of the Senate, filed.

1-19-67—Copies of House Bill Nos. 3, 4, 5, 31, 33 and 34 with certificate of Roman Kelly, Clerk of the Miss. House of Representatives, filed.

3-2-67—Opinion (Judges Coleman, Russell and Cox) establishing Districts for the election of 52 Senators and 122 Representatives in the Mississippi Legislature; parties to suit may, within 10 days file one complete proposed plan for the reapportionment of both Houses of the Legislature for the entire State, such plan to be accompanied by short memoranda or briefs, at opinion of parties, after which the plan will be thoroughly considered by the Court; the Court will then enter its interlocutory order implementing this opinion and changes, if any; this opinion to constitute the Court's finding of fact and concludes as a matter of law that reapportionment herein devised complies with one man one vote rule; the Court retains jurisdiction that it may act upon any plan of Reapportionment hereafter enacted by Leg. of State of Miss.; the order of the Court shall provide for a copy of this opinion and order implementing same duly certified to be served upon the Governor, Attorney General and Secretary of State by the U. S. Marshal, and all Legislators shall be elected and hold office as herein provided until further order of this Court—filed. (Extra copies in drawer in Xerox room)

3-3-67—Three certified copies of the above opinion delivered to U. S. Marshal for service.

3-6-67—Marshal's return on original Opinion of the Court executed as to Hon. Paul B. Johnson, Gov., Hon. Joe T. Patterson, Atty. General and Hon. Heber Ladner, Secty. of State, filed.

3-10-67—Plaintiffs' Proposed reapportionment plan and supporting memorandum with certificate of service, filed.

3-10-67—Copy of above proposed reapportionment plan mailed three judges.

3-13-67—Court reporter's transcript of proceedings taken 7-15-66 before Judges Coleman, Cox and Russell, filed.

3-27-67—Interlocutory Decree: Court finds plan submitted by plaintiff suggesting changes and realignment of Counties in Districts 8, 14, 39 and 40 to be "without merit"; sets forth number of senators and legislators and directs Clerk to mail copies of decree to the Governor, Attorney General and Secretary of State of the State of Mississippi, filed and entered OB 1967, Pages 250-254.

3-27-67—Certified copy of above decree mailed Governor, Attorney General, Secretary of State and Alvin Bronstein.

3-29-67—Opinion of Supreme Court of the United States Per Curiam, The Motion to affirm is granted and the judgment is affirmed. Mr. Justice Douglas is of the opinion that probable jurisdiction should be noted and the case set down for argument, filed.

3-31-67—Copies of Opinion and Letter mailed three judges.

4-25-67—Certified copy of Judgment of the Supreme Court of the United States granting the motion to affirm and affirming the Judgment of the District Court, filed and entered OB 1967, Page 299. Copy mailed three judges.

3-10-67—Final J. S. 6 card (at direction of Judge Cox)

* * *

3-23-71—Notice of Motion of Defendants for approval of apportionment plan of Miss. Legislature at a time and place convenient to the Court with attached motion certificate of service, with Exhibits 1 through 5 attached, filed. (JS 5 Re-op. at direction of Judge Cox)

3-24-71—Copy of above Notice of Motion and Motion with attached exhibits forwarded to Judges Coleman and Russell, Judge Cox directed his placed in file.

3-24-71—Order: Directing plaintiffs and defendants to file parallel briefs within fifteen days, addressed to the validity or invalidity of House Bill 515 of the laws of Mississippi of 1971 approved by the Governor on March 23, 1971, setting out certain points for parties to brief on. Ordered by direction of the panel, signed by Judge Cox, filed and entered O. B. 1971, Pages 326 & 327.

3-25-71—Copy of Order mailed Attorneys R. Jess Brown and Attorney General A. F. Summer, Judge Coleman and Judge Russell.

3-31-71—Notice of Appearance of Constance Iona Slaughter as one of the attorneys of record, for plaintiff with cert. of service; filed.

3-31-71—Motion of R. Jess Brown, Attorney for leave to associate George Peach Taylor as Co-Counsel for plaintiffs, with cert. of service and Cert. of Good Standing from Northern Dist. of Alabama, filed.

4-8-71—Plaintiff's objections to House Bill 515, with cert. of service, filed.

5-12-71—Notice of Appearance of John L. Maxey, II, Geraldine H. Carnes, and Danny E. Cupit as additional counsel for plaintiffs, with certificate of service, filed.

5-13-71—Plaintiff's Additional Objection to House Bill 515, with certificate of service, filed. (Copy handed Judge Cox and Judge Russell)

*2-14-68—Form letter addressed to Hon. Martin M-Lendon, Asst. Attorney General, State of Mississippi, notifying that within 45 days Exhibits would be destroyed if not picked up.

*4-3-68—Exhibits destroyed.

5-17-71—Plaintiff's Motion for Affirmative Relief, with cert. of service, filed.

5-17-71—Plaintiff's Exhibits 1 thru 22, filed. (Exhibit 12 A, B & C are large maps placed in vault.) (Copy delivered to Judge Coleman by Plaintiff. Copy handed Judge Cox by Ann Crews. Copy handed Mrs. Randolph for Judge Russell)

5-18-71—Objections of Attorney General of Mississippi to Proposed Reapportionment Plans filed by the plaintiff, with cert. of service, filed. (Copy handed Judge Russell. Copy handed Mrs. Richmond for Judge Cox. Copy handed law clerk for Judge Coleman.)

5-18-71—OPINION and JUDGMENT: (Judges Coleman, Cox and Russell) All elections to be held district wide; districts electing more than one member all candidates shall qualify and be elected by posts; there shall be 33 Senatorial Districts; for election of state legislators; (here opinion sets out each district described as to county, number of Senators, Total Population of District and Percentage of Population above or below norm per seat); the Court adheres to County lines (rather than beat lines) as the best, fairest & most effective method of delineating districts for the election of legislators in the State of Mississippi; Hinds County is entitled to 12 representatives; Harrison to 7 and Jackson to 5 (without George); a County which elects 3 representatives or less presents no problem because candidates are required to run by posts, however when a County, within its own borders, elects four or more representatives it would be ideal if it could be divided into districts for the election of one member to the district. Under the reapportionment plan herein adopted by this Court, the counties of Hinds, Harrison & Jackson elect 4 or more senators or representatives; the time left available makes it impossible to obtain dependable data, population figures, boundary locations so as fairly and correctly to divide these counties into districts for election of single members of the Senate or the House in the time for the elections

of 1971 however the legislature to be chosen in 1975 and 1979 will be based on the Census of 1970; This Court states that as of January 1, 1972 it expects to appoint a Special Master to take testimony and make findings as to whether the Counties of Hinds, Harrison and Jackson may feasibly be divided into districts of substantially equal numbers in population for the elections of 1975 and 1979 and to file his recommendations with this Court for appropriate adjudication. As to this, jurisdiction is retained. The reapportionment plan herein set out *as to all other Counties is final* and subject to no further review by this County. As provided by Rule 52 this opinion shall constitute the findings of fact and conclusions of law in this case. This opinion shall also constitute and is hereby expressly declared to be the formal JUDGMENT of this Court and shall be docketed as such; the respective parties shall bear their own costs; a copy of this opinion, duly certified shall be served upon each member of the Election Commission of the State of Mississippi and upon the Clerk of the Mississippi House of Representatives and the Secretary of the Miss. State Senate and due return made of such service. The Clerk of the House and the Secretary of the Senate are respectfully requested to have this opinion printed as soon as possible for the use of the membership of the respective branches of the legislature. This being the action of a Court of the United States sitting in equity and not State Action and this being for the purpose of complying with the one man-one vote requirements of the United States Constitution involving no racial discrimination in the exercise of the franchise under the Fifteenth Amendment, we are of the opinion that it is not necessary that this reapportionment plan be submitted to the Attorney General of the United States or the Courts of the District of Columbia under the Voting Rights Act of 1965 as extended, 42 USC 1971,

1973 et seq. This judgment shall be in full force and effect from and after this date. Filed and entered OB 1971. Pages 759-784.

5-18-71—Five copies of the above Opinion & Judgment handed to U.S. Marshal for service.

5-18-71—The Judges handed copies to Attorneys George Peach Taylor, John L. Maxey, Assistant Attorneys General of State of Miss. William Allain and James Rankin.

5-19-71—Marshal's returns on above Opinion & Judgment executed as to Secretary of the Mississippi State Senate, executed as to Clerk of the Mississippi House of Representatives, and executed as to Members of the Election Commission by placing on deck of John Bell Williams after he refused to accept service, filed.

5-21-71—Motion of Plaintiffs to alter or amend judgment of 5-18-71 or in alternative Motion for immediate appointment of Special Master with instructions, and for other relief with certificate of service, filed.

5-21-71—Copy of above motion handed Judge Cox, mailed Judges Coleman and Russell.

5-22-71—Order Amending and Supplementing Judgment dated May 18, 1971, filed and entered OB 1971, P. 796-799. Certified copy served by U.S. Marshall on 5-22-71 on Heber Ladner and George Peach Taylor, and on 5-24-71 on John Bell Williams and A. F. Summer.

5-22-71—Order overruling motion of Plaintiffs for appointment of special master to create single member district in Hinds County. Filed and entered OB 1971, P. 800-801. Certified copy served by U.S. Marshal 5-22-71 on Hebner Ladner and George Peach Taylor and on 5-24-71 on John Bell Williams and A. F. Summer.

5-24-71—Notice of Appeal of Plaintiffs and The Mississippi Freedom Democratic Party to U.S. Supreme Court with certificate of service, filed.

5-24-71—Bond for costs on appeal in amount of 7250.00 filed and paid into registry of Court.

5-24-71—Motion of Plaintiffs for stay of judgment and injunction pending appeal with certificate of service, filed.

5-24-71—Copy of above motion for stay of judgment handed Sue Richmond for Judge Cox, mailed Judges Coleman and Russell.

5-24-71—Certified copy of Notice of Appeal mailed John F. Davis, Clerk, U.S. Supreme Court.

5-24-71—Mimeographed notice re appeal mailed Court Reporters.

5-24-71—Copy of Orders filed 5-22-71 mailed all attorneys of record.

5-25-71—Order denying motion of Plaintiff to stay judgment and on alternative motion for a restraining order pending appeal, Filed and entered OB 1971, P. 806. (copy mailed attorneys, handed Judge Cox (by sue) and mailed Judges Russell and Coleman.)

5-28-71—Court reporter's transcript of hearing on 5-14-71 in Jackson before Judges Coleman, Cox and Russell, with certificate, filed.

6-2-71—Marshal's return on two attached Orders executed as to George Peach Taylor, Heber Ladner, John Bell Williams and A. F. Summer, filed.

6-3-71—Request to Clerk of Plaintiffs to certify and transmit partial record on appeal with certificates of service, filed.

6-4-71—Certified copy of per curiam ORDER OF SUPREME COURT OF THE UNITED STATES: the judgment below is stayed until 6-14-71. The District Court is instructed to devise and put into effect a single-member district plan for Hinds County by 6-14-71 and extend the 6-4-71 filing date for legislative candidates from Hinds County to appropriate date so those candidates and the State of Miss. may act in light of new districts into which Hinds County will be divided. Chief Justice, Justice Black and Justice Harlan dissent and reserve the right to file an opinion to that effect, filed and entered OB 1971, pages 868 through 872.

6-5-71—EXHIBITS: P-1 through P-3, filed.

6-5-71—(Copies of above Per Curiam Order of Supreme Court of the U.S. handed A. F. Summer, William Allain, John L. Maxey, George P. Taylor and Judges Coleman, Cox and Russell.)

6-7-71—(Copies of above Supreme Court Per Curiam Order mailed Constance Slaughter and James E. Rankin.)

6-7-71—Dissenting Opinion of Supreme Court Mr. Justice Black, with whom The Chief Justice and Mr. Justice Harlan join, file. (Copy handed Sue for Judge Cox, Madge for Judge Russell and mailed Judge Coleman.) Filed and entered OB 1971, Pages 872-A through 872-C.

6-7-71—Court Reporter's Transcript of proceedings had on 6-5-71 at Jackson, Mississippi before Judges Coleman, Cox and Russell, filed.

6-8-71—ORDER appointing William D. Neal as Special Master in this case to propose a valid plan, if such be possible, for division of Hinds County as directed by the Supreme Court, to be done and filed not later than 6-14-71, and sooner if possible; said Special Master shall file with this Court a written report of his findings, conclusions and recommendations; Special Master shall be allowed expenses and just and reasonable compensation for his services and other necessary costs as allowed and approved by this Court, to be taxed according to law. Filed and entered OB 1971, P. 884-887. (Copy handed to A. F. Summer, Atty. General and 2 copies handed Houston J. Patton for George Peach Taylor and John Maxey.)

6-8-71—Oath of Special Master executed, filed.

6-11-71—Alias Summons, original and 32 copies, copies having attached copy of Complaint, issued and handed U.S. Marshal.

6-14-71—Report of Special Master William D. Neal with Exhibits A and B attached, filed. (Copy handed John Maxey, George P. Taylor and James A. Haddad (Atty. Gen's. Office) Copy mailed Judge Coleman, handed Judges Cox and Russell.)

6-14-71—Notice to Attorneys for Plaintiffs and Defendants to file any exceptions, if any, to above report by noon June 15, 1971. Filed and entered OB 1971, P. 898. (Copies handed Maxey, Taylor and James Hadded for Attorney General.)

6-15-71—Motion of Defendants to modify Opinion, Findings of Fact, Conclusions of Law and Judgment of May 18, 1971, as Amended May 21, 1971 with certificate of service, filed. (Copy handed Judge Russell, Judge Cox and mailed Judge Coleman.)

6-15-71—Response of Defendants to Report of Special Master, filed. (Copy handed Judges Russell, mailed Judge Coleman.)

6-15-71—Motion of Plaintiffs to rerefer certain matters to Special Master with certificate of service, filed. (Copy handed Judges Russell and Cox, mailed Judge Coleman.)

6-15-71—Objections of Plaintiffs to report of Special Master with certificate of service, filed. (Copy handed Judges Russell and Cox, mailed Judge Coleman.)

6-15-71—Motion of Plaintiffs for hearing of objections to Report of Special Master with certificate of service. (Copy handed Judges Russell and Cox, mailed Judge Coleman.)

6-15-71—Amendment of Plaintiffs to objections to report of Special Master with certificate of service with Appendix A, B and C attached, filed. (Copy handed Judges Russell, and Cox, mailed Judge Coleman.)

6-16-71—Opinion of Court on Remand from Supreme Court Staying Order dated 6-3-71 with Exhibits A and B (Exhibit B having exhibits A and B also) attached, filed.

6-16-71—Order: Motion of defendants to modify former opinion and finding of facts and conclusions of law denied; Motion of Plaintiffs to re-refer case to Special Master denied; Candidates for office of Senator and Representative in the Mississippi Legislature for Hinds County for 1971 elections shall run and be elected from county at large and candidates shall have until noon, Saturday, June 19, 1971, to qualify for said election; This Order is interlocutory in character and Special Master (William D. Neal) will not be discharged but remain available to the Court for further services herein if necessary; Twenty-Five copies of this Order with supporting and underlying attachments shall be transmitted by the Clerk of this Court by air mail to the Clerk of Supreme Court of U.S. as the report of this court on its findings and clusions on the record made by Plaintiffs in this case. Filed and entered OB 1971, P. 1014-1017. (Copies handed Maxey for George Taylor, mailed A. F. Summer.)

6-16-71—Twenty-five certified copies of Opinion with Attachments and Twenty-five certified copies of Order forwarded by air mail to E. Robert Seaver, Clerk, U.S. Supreme Court, Washington, D.C.

1-26-72—Per Curiam Order from the Supreme Court ". . . , the judgment of the District Court is vacated, except insofar as it applied to the 1971 elections, and the case is remanded to the District Court for further proceedings consistent with this opinion," filed.

2-28-72—Order: Certified copy of Order from Supreme Court: The judgment of the District Court is . . . 'vacated with costs, except insofar as it applied to the 1971 elections; and that this cause be, and the same is hereby, remanded to the United States District Court for the Southern District of Mississippi for further proceedings consistent with the opinion of this Court," filed and entered OB 1972, Page 277.

4-12-72—Bill of Costs in the sum of $100.00, with copy of letter from Supreme Court Clerk dated 2-23-72 attached, filed.

4-24-72—Costs in the sum of $100.00 taxed.

10-4-72—Certified copy of Order: Clerk of Court issue check in amount of $2,750.00 payable to Lawyers Committee for Civil Rights Under Law, representing cash refund of cash bond on appeal in each of eleven cases listed, filed and entered OB 1972, page 1196. (DMR)

10-17-72—Certified copy of Order: Clerk of Court issue check in amount of $750.00 payable to Lawyers' Committee for Civil Rights Under Law, representing cash refund of cash bond on appeal in each of above cases (3641, 3830 & 4808), filed and entered OB 1972, Page 1196 (DMR)

1-3-73—Pltf's. motion for apportionment of special master with instructions, and reference to establish single member districts for Hinds, Harrison & Jackson coun-

ties, with cert. of service and notice of motion on 1-12-73 in Jackson before Judge Cox in Jackson, filed.

1-4-73—Order for Deferment: Pltfs. directed to immediately contact proper officials of Mississippi Legislature and make known their contentions and make available all date to enable Legislature to dispose of questions relating to Hinds, Harrison and Jackson Counties within time indicated. Action of the Court on appointment of a Master will be disposed of by proper order at a later time. Ordered for the entire Court, filed and entered OB 1973, pages 4 & 5. (WHC) (Copies mailed Mr. Summer, Mr. Taylor and Judges Coleman and Russell. Anne Crews handed copy for Judge Cox.)

1-22-73—Motion of George Peach Taylor for leave to Withdraw as Counsel for Plaintiffs, with cert. of service, filed.

1-26-73—Motion of pltfs. for leave to associate Frank R. Parker as Co-Counsel with exhibits attached, with cert. of service, filed.

2-9-73—Defendants Submission pursuant to Order for Defendant and Motion for Approval of Apportionment of the Mississippi Legislature with Notice of Hearing at a time and place convenient to the Court, certificate of service and attachment, filed.

3-13-73—Order for Plaintiffs to Show Cause: Pltfs. are cited to show cause on 4-20-73 at 9:00 A.M. in Courtroom No. 2 in Jackson, Miss. why legislative enactments as passed and adopted should not be approved under the rule of Supreme Court as being in compliance with the "one person, one vote" rule. An attested copy of this order delivered by U.S. Marshal at office of one of the attys. for pltf. shall constitute service, filed and entered OB 1973, pages 414 and 415. (WHC) (Certified copy handed U.S. Marshal to be delivered to John L. Maxey and Judge Russell) (Copies

mailed Judge Coleman, and William Allain, Asst. Atty. Gen.) (Per Anne Crews)

3-13-73—Marshal's return on Order to Show Cause executed as to Judge Russell and John Maxey on 3-13-73, filed.

3-14-73—Plaintiffs' objections to House Bill 446 add Senate Bill 1701, with cert. of service, filed. (Copy handed J. Nall for Judge Cox, handed M. Randolph for Judge Russell and mailed to Judge Coleman.)

4-5-73—Notice of plaintiffs to take deposition of Rep. Stone D. Barefield on 4-10-73 in Hattiesburg, Miss. beg. at 10:00 a.m., with cert. of service, filed.

4-5-73—Deft. William L. Waller's Motion for Protective Order against taking of deposition of Rep. Stone Barefield and staying all further discovery and Notice for hearing before Judge Cox on 4-5-73, with cert. of service, filed.

4-5-73—Order: George Peach Taylor permitted to withdraw as counsel for plaintiffs and John L. Maxey, II and Frank R. Parker remain as and be substituted as counsel in his place, filed and entered OB 1973, Page 510 (Copy mailed attorneys—copy handed atty. Frank Parker.)

4-5-73—Order: Deft. Gov. Waller's Motion for Protective Order on Discovery denied except that pltfs. in their discovery shall be limited to 5 depositions of members of the Miss. Legislature and are prohibited from taking depositions of newspaper reporters or of members of the staff of the Miss. Legislature or staff persons employed for purposes of working on the state reapportionment plan but if pltfs. can show good cause for necessity of additional depositions of legislators they may apply to Court by motion for such further discovery, filed and entered OB 1973, Page 511 (Copy handed atty. Parker, mailed other attorneys.)

4-9-73—Defendant's submission concerning present issues before the Three Judg Court, with cert. of service and letter from Heber Ladner, Jr. stating a copy to be mailed to individual judges, filed.

4-10-73—Pltf's. notice of deposition upon oral examination of Rep. Horace Lester and Sen. Con Maloney on 4-13-73 in Jackson, with cert. of service, filed.

4-12-73—Amended submission pursuant to order for deferment and motion for approval of apportionment of the Mississippi legislature with Exhibit I & II and cert. of service, and notice of motion at time and place convenient to the Court, filed.

4-12-73—Letter from A. F. Summer stating copies of above motion mailed individual judges, filed.

4-13-73—Attorney Frank Parker's return on deposition subpoena executed as to Rep. Horace B. Lester on 4-12-73, filed.

4-17-73—Pltf's. motion for continuance, with cert. of service, filed. (Copies placed in Judges' files.)

4-17-73—Pltf's. motion for substitution of successor public officials as defendants, with cert. of service, filed. (Copies placed in Judges' filed.)

4-17-73—Pltf's. notice of above two motions on 4-20-73 at 9:00 A.M. in Jackson, filed.

4-18-73—Deposition of Horace B. Lester taken by pltf. on 4-13-73, filed.

4-18-73—Deposition of James C. Maloney taken by pltf. on 4-13-73, filed.

4-19-73—Plaintiffs' Objections to House Bill 1389 and Senate Bill 2452, and Prayer for Injunctive Relief with Exhibits A, B and C attached, with cert. of service, filed.

4-19-73—Deposition of Stone D. Barefield, Vols. I & II, taken on 4-10-73 in Hattiesburg, Miss., with Exhibits 1 through 7 attached in separate brown manila envelope, filed.

4-19-73—Deposition of William Winter taken in Jackson, Miss. on 4-17-73, with Exhibits 1 through 5 attached, filed.

8-27-73—Deposition of Harold E. Sweeney, Jr. taken by pltf. on 4-20-73, filed.

8-27-73—Deposition of Harold E. Sweeney, Jr., Volume II taken by pltf. on 4-20-73, filed.

8-27-73—Exhibits 1 through 12 to deposition of Harold E. Sweeney taken by pltf. on 4-20-73, filed. (EXHIBITS 1 & 2 in BROWN ENVELOPE IN VAULT. EXHIBITS 3 through 12 ARE LARGE MAPS AND PLACED IN VAULT.)

3-19-74—Large roll of exhibits (maps & Charts) received from Supreme Court and placed in vault.

4-26-74—Plaintiff's motion for leave to file supplemental complaint, with copy of Supplemental complaint and attachments, Cert. of service and notice of motion on 5-3-74 before Judge Cox in Jackson, filed. (Copy for Judge Cox put in Glenda Bond's box to be handed to Judge Cox) (Other copies placed in files per Bobbie Price.)

5-10-74—ORDER denying plaintiffs' motion for leave to file supplemental complaint, filed and entered OB 1974, page 753. (Copies mailed all attys. of record) (Copies placed in Judge's files and not mailed per B. Price.)

5-20-74—Motion for Review and Reconsideration by Three-Judge Panel of Plaintiffs' motion for leave to file supplemental complaint, with attachment and cert. of service, and notice of motion before Judge Coleman, Russell and Cox on 5-31-74 in Jackson at 9:00 A.M., filed.

(Copy handed Glenda Bond for Judge Cox and mailed Judges Coleman and Russell.)

10-1-74—Notice of plaintiff of taking of deposition upon written questions, with Questions to be Propounded, cert. of service and Exhibits A thru I, filed.

10-11-74—Plaintiffs' request for admission of facts and genuineness of documents, with cert. of service and Exhibits 1 thru 27, filed. (EXHIBITS 1 THRU 27 placed in separate folder in file and marked.)

10-15-74—Pltf's. notice of depositions upon oral examination of Dr. James W. Loewen on 10-17-74 and Dr. Gordon G. Henderson on 10-18-74, with cert. of service, filed.

10-28-74—Notice of plaintiffs to take depositions of Rep. Robert Clark and Dr. Gordon G. Henderson on 11-1-74, with cert. of service, filed.

11-7-74—Defendants' response to pltfs.' request for admission of facts and genuineness of documents, with cert. of service, filed.

11-15-74—Plaintiff's motion to compel answers to plaintiffs' request for admission of facts and genuineness of documents, with Exhibit A & B, and notice of motion on 12-2-74 in Gulfport before Judge Russell at 9:00 A.M., with cert. of service, filed. (Copy handed Glenda for Judge Cox and mailed Judges Coleman and Russell.)

12-3-74—DEPUTY CLERK SHEET: Hearing in Gulfport on 12-2-74 for 15 min. on motion to compel answers to plaintiffs' request for admissions of facts and genuineness of documents. ACTION TAKEN: Deft. granted 10 days to submit brief—under advisement. (Judge Russell discovered, after hearing above motion, that Judge Cox is the Managing Judge—Judge Russell will contact Judge Cox.)

12-16-74—Deposition of Interrogatories to Hon. J. Stanley Pottinger, filed.

1-17-75—Letter written to U.S. Supreme Court requesting they search their records to see if a portion of this case file is still in their office. List of documents that are missing attached to letter. (Sue)

01-24-75—Plaintiffs' Notice to take Depositions of Rims Barber and Dr. David Valinsky on February 3rd and 7th, with Certificate of Service, filed.

01-29-75—Deposition of Dr. James W. Loewen with Exhibits, taken by pltfs., filed.

01-30-75—Pltf's. motion for an order to defendants to show cause why the current State Legislative Reapportionment should not be enjoined, with cert. of service and notice of motion on 02-07-75 in Jackson at 9:00 A.M., filed. (Copies mailed Judges Russell and Coleman and placed in Glenda's Box for Judge Cox.)

02-05-75—Amendment to the interrogatories of the Honorable J. Stanley Pottinger, filed.

02-07-75—Deposition of Dr. Gordon G. Henderson taken by pltfs. on 11-1-74, with Exhibits 1 thru 17 attached, filed.

02-07-75—EXHIBITS: P-1 through P-20 and D-1 and D-2; filed.

02-07-75—Deposition of Rims Barber taken by pltfs. on 2-3-75 in Jackson, Miss., filed.

03-07-75—Bill of William D. Neal in amount of $602.58 paid by State Attorney General, filed with Exhibit A.

03-12-75—Pltf's. notice of deposition of Henry J. Kirksey on 03-17-75, with cert. of service, filed.

04-09-75—Deposition of Henry J. Kirksey taken by pltf. on 03-17-75 with Exhibits, filed. (EXHIBITS WRAPPED, MARKED AND PLACED IN VAULT—LARGE SQUARE PACKAGE.)

04-11-75—JUDGMENT: As managing judge and by direction of the entire Court, it is ORDERED: Entire proceedings before this Court involving the 1967 and 1971 reapportionment of the Legislature are hereby dismissed without prejudice; Plaintiffs are directed to file in this cause, as Civil Action No. 3830(A), an amended complaint to attack said 1975 enactments of the Legislature of Miss. within 5 days after receipt of a copy of this order; Defts. shall file their answers within 5 days after receipt of copy of such amended complaint; This Court upon receipt of such pleadings will immediately proceed to convene and conduct hearing on questions presented and make prompt and proper disposition thereof. A Copy of the pleadings of the parties shall be mailed directly to the three members of this Court at their proper addresses by the parties, filed and entered OB 1975, pages 661-662. (Copies mailed Judges Coleman and Russell by G. Bond.) (Copies mailed Mr. Brown, Parker, Slaughter, Maxey, Carnes and A. F. Summer.)

04-15-75—AMENDED COMPLAINT for Injunctive and other Equitable Relief, with Exhibits 1 thru 4 and cert. of service, filed. (No Process-Attys. directed to mail copies to Judges per Order of 04-11-75.)

04-17-75—Pltf's. motion to alter or amend judgment, with cert. of service and notice of motion on 04-25-75 in Jackson at 9:00 A.M., filed. (Copies mailed Judges Coleman and Russell and placed in Glenda's box for Judge Cox.)

04-21-75—ANSWER to amended complaint for injunctive relief and other equitable relief, with cert. of service, filed. (Copies mailed Judges Coleman & Russell and placed in Glenda's box for Judge Cox.)

04-23-75—Deft's. submission pursuant to Order and motion for approval of the 1975 Apportionment Plan for the

Mississippi Legislature with cert. of service and Exhibits I thru IV and indefinite notice of motion, filed.

05-07-75—EXHIBITS: P-1 through P-35; and D-1, filed.

05-07-75—Pltf's. motion for prompt and immediate decision and for other related relief, filed. (Copy mailed Judge Coleman and handed Gwen and Glenda for Judges Russell and Cox.)

05-14-75—Pltf's. motion to supplement the record, with cert. of service and Affidavit of Henry Klibanoff and attachment, filed. (Frank Parker's letter of transmittal stated he had mailed copies to members of three judge court at direction of Court.)

05-14-75—Court Reporter's transcript of proceedings held in Jackson on 05-07-75 before Judges Coleman, Cox and Russell, filed.

5-20-75—OPINION: Except as to Harrison County, the complaint will be dismissed with prejudice; as to that County, jurisdiction will be retained to effectuate the purposes with reference thereunto stated; counsel for parties are directed to forthwith prepare and submit a decree accordingly, which any Judge of this Court is hereby authorized to enter for the Court; the respective parties will bear their own costs, filed. (Judges Coleman, Russell & Cox) (Copy handed to all attorneys of record.)

5-22-75—JUDGMENT: Amended Complaint dismissed with prejudice except as to Harrison County, as to which the Court retains jurisdiction for the limited purposes set out in the Court's opinion of May 19, 1975; that the parties bear their respective costs, filed and entered OB 1975, pages 845-846 (WHC) (Copy mailed attys. Frank Parker and John L. Maxey, II; copy handed Ed Noble, Attorney General's office.)

5-22-75—Plaintiffs' Notice of Appeal to the Supreme Court of the United States from judgment entered 5-22-75, with cert. of service, filed.

05-23-75—Pltf's. motion for stay of judgment and stay of the 1975 Miss. Legislative Elections pending appeal, with cert. of service, filed.

05-23-75—ORDER: Motion for an order enjoining the 1975 Miss legislative elections pending appeal to Supreme Court is denied, filed and entered OB 1975, page 851. (Copies mailed Judge Coleman and Judge Russell, and placed in Glenda's box for Judge Cox. Copies mailed attys. of record.)

06-06-75—Plaintiff's Motion Temporary Restraining Order. (Copy handed G. Bond, for Judge Cox, Copy handed G. Bryant for Judge Russell, and Copy mailed Judge Coleman.)

06-06-75—ORDER: Motion for temporary Restraining Order, is hereby denied, filed and entered OB 1975, page 969. (Copies mailed Judge Coleman and Judge Russell, and placed in Glenda's box for Judge Cox. Copies mailed Attys. for record.)

06-09-75—ORDER SUPREME COURT OF THE UNITED STATES, Whereof, it is Ordered that the Judgment of United States District Court in this cause is hereby, reversed with costs, and same is remanded to the United States District Court for the Southern District of Mississippi for further proceedings in conformity with the opinion of this Court, It is further ordered that the said appellants, Peggy J. Connor, et al, recover from William L. Waller, Governor of Mississippi, One Hundred Dollars ($100) for their costs herein expended, filed and entered OB 1975 page 972. (Copies mailed to Jess Brown, Frank R. Parker, John L. Maxey, II and A. F. Summer.)

06-09-75—Motion for Injunctive Relief and to enforce the mandate of the United States Supreme Court, with certificate of service, filed.

06-10-75—ORDER: Motion for Temporary Restraining Order to stay and suspend the 6-6-75, qualifying deadline for party candidates for membership in the Miss. House of Representatives and the Miss. Senate is denied, filed and entered OB 1975, page 980. (Copies mailed attys. of record and placed in Glenda's and Gwen's boxes. Copy mailed Judge Coleman.)

06-11-75—Motion of USA to intervene as plaintiff, with cert. of service, filed. (Copy mailed Judge Coleman and placed in Courtroom Deputy's boxes for Judge Cox and Russell.)

06-11-75—ORDER: USA is allowed to intervene as party plaintiff, filed and entered OB 1975, page 998. (Copies mailed attys. of record and Judge Coleman, and placed in Glenda's and Gwen's box for Judges Cox and Russell.)

06-11-75—Complaint in intervention with certificate of the Attorney General of the U.S. filed. (Stated no service was required.) (Copy mailed Judge Coleman and placed in Courtroom Deputy's box for Judges Cox and Russell.)

06-12-75—Motion of USA for preliminary injunction, with cert. of service, filed. (Copy handed Glenda for Judge Cox, handed Gwen for Judge Russell and mailed Judge Coleman.)

06-19-75—Deft's. ANSWER to complaint in intervention, with cert. of service, filed.

06-19-75—Deft's. petition for a Writ of Mandamus, with cert. of service, filed.

06-19-75—Defts'. objections to pltfs.' motion for injunctive relief and to enforce the mandate of the Supreme

Court of the U.S. and to the motion of the USA for preliminary injunction, with cert. of service, filed.

06-19-75—Copies of above three documents handed or mailed three judges by Atty. Gen.

06-19-75—Court reporter's transcript of proceedings held in Jackson on 06-12-75 before Judges Coleman, Cox and Russell, filed.

06-20-75—EXHIBITS: J-1 and Court-1, filed;

06-20-75—ORDER VACATING JUDGMENT: It is the judgment of the Court that all pleadings involving the 1967 and 1971 Legislature should be and remain as an active part of the entire matter before the Court and to that end said Judgment of the Court dated April 10, 1975 and filed 04-11-75 is rescinded and vacated, filed and entered OB 1975, page 1047. (Copies mailed attys. and Judges Coleman and Russell and handed Judge Cox.)

*

06-24-75—Friend of the Courts Petition of Thomas G. Russell and motion for Single Member Districts, with cert. of service, filed. (Copy handed Judge Cox and mailed Judges Coleman and Russell.)

*

06-23-75—Court Reporter's Transcript of proceedings held in Jackson on 06-20-75 before Judges Coleman, Cox and Russell, filed.

06-25-75—ORDER: Dept. of Justice to file memoranda with the Court setting forth, district by district, facts of record demonstrating unconstitutional dilution of black voting strength as asserted by Dept. of Justice; plaintiffs may file similar memoranda as to districts to which they have objected, if they do desire. Further this Court, where necessary, proposes to alter any district to remedy any existing unconstitutional dilution of black voting strength. Memoranda need not be addressed to Hinds, Harrison and Jackson Counties. Parties advised that the Court proposes to formulate a temporary plan for election of Senators and Representatives for 1975 for election of Senators and Representatives for 1975 election ONLY, first primary schedules for 08-05-75. A permanent plan for reapportionment cannot be now formulated due to lack of time. When permanent plan for election of legislators in quadrennial elections of 1979 has been accomplished, special elections may be ordered in those legislative districts where required by law, equity, or the Constitution of the U.S. Legislative districts altered by temporary plan for 1975, candidates will be allowed adequate time for qualification in the altered districts; however, those already qualified will remain. Scheduled elections for members of the legislature in 1975 will not be postponed. (This order sets out the redistricting of Jackson, Harrison and Hinds Counties.) Ordered by unanimous direction of the Court, filed and entered OB 1975, pages 1068-1073. (Copies handed attys. of record and handed Judges Cox and Coleman and mailed Judge Russell by Anne Crews. Copy taken to Washington by Charlie Sutherland for Mr. Gerald Jones.)

06-25-75—Copy of letter from Judge Cox to Mr. Arny Rhoden, U.S. Marshal dated 06-25-75, directing that a copy of above order be delivered by special messenger to Mr. Gerald Jones of the U.S. Dept. of Justice, filed.

6-27-75—Pltfs.' Supplemental Submission on Hinds County Single Member Plans with Exhibits A thru E attached, with cert. of service, filed. (Frank Parker stated to G. Burdette he mailed copy to each of the three Judges.)

07-02-75—Marshal's return on letter from Judge Cox to Mr. Rhoden, executed, filed.

07-02-75—Motion of City of Jackson, Miss., A Municipal Corporation, to intervene as party plaintiff, filed. (Copy handed Judge Cox by Mr. Smith and mailed Judges Coleman and Russell.)

07-02-75—Pleading of the City of Jackson, Mississippi as Intervenor, with cert. of service, filed. (Mr. Smith stated Judge Coleman told him to file the above and a hearing would be had on Mon., July 7, 1975.) (Copy handed Judge Cox by Mr. Smith and mailed Judges Coleman and Russell.)

07-03-75—Order allowing the City of Jackson, Miss. to file an amicus curiae brief within 3 days from or after 07-03-75, filed and entered OB 1975, page 1106. (Copy handed Mr. Smith of City and mailed other attys. of record.) (Copy handed Judge Cox and mailed Judges Coleman and Russell.)

07-03-75—Pltf's. objections to Court-ordered districts established by Order of 06-25-75, with cert. of service, filed.

07-07-75—Defendants' objections to the June 25, 1975, Court-Ordered Legislative Districts, with cert. of service and Appendix A & B, filed. (Copies handed Judges Cox, Russell and Coleman.)

*

07-02-75—Letter from Conner Cain of Stone County, Miss. dated 06-30-75 to Mr. Thomas re grievances about Order of June 25, 1975, filed.

07-02-75—Letter from Mack McInnis of Greene County, Miss., dated June 30, 1975 to Clerk of Court re new Representative Post, filed.

07-07-75—Exhibit: D-1, filed;

07-08-75—Order establishing certain temporary districts for the election of Senators and Representatives in the Miss. Legislature for the year 1975 Only. Clerk

of Court shall forthwith furnish a true copy to the Secty. of State of the State of Miss. and to each County Registrar in the affected county for the information of those charged with the duty of preparing and distributing the 1975 primary election ballots, filed and entered OB 1975, pages 1137-1178. (Copies handed attys. of record. Copies mailed Judges Coleman and Russell and handed Judge Cox by A. Crews.)

07-08-75—Plaintiff's Modified Mitchell Plan No. 2, with cert. of service and attachments, filed. (Copies mailed to Judges by Mr. Parker.)

07-09-75—Certificate of mailing certified copies of Order filed on 07-08-75 to Heber Ladner, Secretary of State and to Circuit Clerks of named counties, with attached list, filed.

07-10-75—U.S. Dept. of Justice House Plan for Hinds County, filed. (Copies delivered by Highway Patrol to all 3 Judges on 09-09-75.)

07-10-75—Special Master's House Plan for Hinds County by New Voting Precincts July 9, 1975, filed. (Copies delivered by Highway Patrol to all Judges on 09-09-75.)

07-11-75—Order establishing certain temporary Districts for the election of Senators and Representatives in the Miss. Legislature for the Year 1975 only; Parties shall file with the Clerk of Court plans for permanent reapportionment of the Legislature; Hoyt T. Holland, Jr. is designated to serve as Special master in this case to serve under our orders and directions, filed and entered OB 1975, pages 1193-1239. (Copies distributed to Judges and all attys. of record.)

07-14-75—Per Telephone Instructions of Judge Coleman: Precinct 8 interlined on page 40 of Order filed on 07-11-75 .

07-21-75—Order: To correct an error in transcription, it is ordered that Order dated 07-11-75, with reference to

Distict 43 for the election of Representatives is corrected as contained in this order, filed and entered OB 1975, pages 1270-1271. (Judge Coleman mailed copies to Judges Cox and Russell. Copies mailed all attys. of record.)

07-21-75—Pltf's. motion to alter or amend judgment with cert. of service and attachments, filed.

07-23-75—Deft's. response to motion to alter or amend judgment, with cert. of service, filed.

07-24-75—Motion of the United States for amendment of judgment, with cert. of service, filed. (Copies mailed all Judges by U.S. Atty's. office.)

8-1-75—Order: The Court declines to set a deadline of 2-1-76 for completion of a permanent plan for reapportionment of Miss. Legislature but reiterates its firm determination to have such plan approved before 2-1-76; as to all instances in which a special election may be required, the Court expects to direct that same shall be held in conjunction with the 1976 Presidential election so as to save the expense of special elections as far as possible; on pltfs' motion to delete that portion of the Court's order appointing Hoyt T. Holland, Jr. as special master, the Court expects to formulate its own permanent plan and the duties of Mr. Holland will be only to assist in that regard; the matter of costs and attys. fees will be decided in the final judgment establishing the perm. plan—filed and entered OB 1975, pages 1312-1314 (copy handed attorneys of record except copy mailed John Maxey at his request) (copy mailed Judges Coleman and Russell, handed Judge Cox.)

8-1-75—Order: The population figures released by U.S. Bureau of Census giving its population estimates as of 1973 shall be used as the basis of and for the establishment of a permanent plan of reapportionment of

the Miss. Legislature—the parties in compiling the various plans to be submitted to the Court will be governed accordingly, filed and entered OB 1975, pages 1315-1317 (copy handed attorneys of record except copy mailed John Maxey at his request) (copy mailed Judges Coleman and Russell, handed Judge Cox.)

10-8-75—Motion of USA for extension of time for filing plans for permanent apportionment, with cert. of service, filed. (Copies handed Glenda for distribution to three Judges.)

10-9-75—Order: U.S.A. granted up to and including 10-22-75 to file permanent plans for reapportionment of legislature, filed and entered OB 1975, Page 1651. (Copy mailed attys. Parker, Maxey and Atty. Genl., copy handed U.S. Atty.) (Copy mailed three judges.)

10-9-75—Defendants Submission Pursuant to Order, with cert. of service, filed. (Copy mailed three judges.)

10-14-75—Order: Motion of U.S.A. for extension of time until 10-22-75, filed 10-8-75, granted, filed and entered OB 1975, page 1669 (J. P. Coleman) (copy mailed attorneys) (copy mailed Judges Coleman and Russell, handed Judge Cox.)

10-15-75—Pltf's. submission of permanent Legislative Reapportionment Plans, with cert. of service and Exhibits, filed. (Copies mailed all three Judges by Frank Parker.)

10-20-75—Report to the Court of Department of Justice on special census for Oktibbeha, Lowndes and Noxubee Counties, with cert. of service, filed. (Copies mailed to Judges Coleman and Russell and handed Glenda for Judge Cox.)

10-24-75—Order: USA. intervenor, and the Attorney General of the U. S. as soon as practical after entry of this order shall file with this Court the most current

evidentiary data as set out in Order and USA, intervenor shall file a cert. with the Court listing by Counties, alphabetically, the offices to which Negro candidates aspired in said elections, the name of such candidates, and whether or not they were elected, filed and entered OB 1975, pages 1812-1814. (Copies mailed attys. Parker, Slaughter, Smith, Maxey, Summer, Allain, Hauberg and Judges Coleman & Russell and handed Glenda for Judge Cox.)

10-31-75—Alternative Plans submitted by the United States Pursuant to Order of 07-11-75, with Exhibits, attachments and cert. of service, filed.

01-26-76—Submission of the United States pursuant to October 24, 1975 Court Order, with attachments and cert. of service, with request for hearing date on 02-10-76, filed. (Per. tel., Mr. Jones of Dept. of Justice stated he had mailed each of the three Judges a copy of this on 01-24-76)

01-29-76—ORDER: Further hearing and decision of this case will be deferred until the Supreme Court shall have decided cited cases, at which time this Court will bring this case to trial forthwith, filed and entered OB 1976, pages 238-240. (Copies mailed to Mr. Parker, Smith, Maxey, Summer & Hauberg) (Copies mailed Judges Russell and Coleman. Cpy. handed Glenda for Judge Cox.)

02-09-76—Pltf's. supplemental submission of permanent Legislative Reapportionment Plans, with cert. of service and attachments, filed. (Copies handed Glenda & Gwen for Judges Cox & Russell and mailed Judge Coleman.)

75-1184

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. , Misc.

PEGGY J. CONNOR, HENRY J. KIRKSEY, ET AL.,

Petitioners,

v.

HONORABLE J. P. COLEMAN, United States Circuit Judge, HONORABLE DAN M. RUSSELL, JR., United States District Judge, HONORABLE HAROLD COX, United States District Judge, and the UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI,

Respondents.

Response of James P. Coleman, United States Circuit Judge, 5th Circuit, on behalf of himself, Chief District Judge Russell, and District Judge Cox (3 Judge Court) to the Motion of Petitioners for Leave to File a Petition for Writ of Mandamus

James P. Coleman
United States Circuit Judge
Ackerman, Mississippi 39735
601-285-6512

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States

In response to the motion for leave to file a petition for writ of mandamus in this case, the undersigned James P. Coleman, United States Circuit Judge, for and on behalf of himself and the other judges of the three judge District Court, respectfully begs leave to file the following response.

It is noted that the United States Department of Justice, a very active party participant in this case, has not joined in the motion for leave to file the petition for mandamus.

The members of the three judge District Court, who have labored with the perplexities and intricacies of this legislative reapportionment case for ten years, respectfully inform the Court that there is not now, and there has never been, any purpose to delay the final termination of this litigation, consistently with the requirements of the law and sound judicial practice.

As will be seen from the pleadings and exhibits filed by the petitioners, and as evidenced by the presence of the Department of Justice in this case, the paramount issue remaining for disposition is impermissible dilution or minimization of black voting strength. Please see the May 19, 1975 opinion of this Court, 396 Fed. Supp. 1308, and our opinion dated July 11, 1975, petitioners' appendix F, page 26a.

Our order of January 26, 1976, appendix A of the petition [the copy appearing at page 2a incorrectly dates at 1975], deferred this case solely in order that we may have the benefit of decisions anticipated from the Supreme Court in three cases therein cited, dealing with the subject of impermissible dilution or minimization of the black vote.

The legislature elected under the temporary reapportionment plan of 1975 is now in session, scheduled by law to adjourn April 1, 1976. It is not due to be reassembled, in absence of a special session, until January, 1977. Thus, no emergency exists requiring the Court to rush into a premature decision in this case which might turn out to be at variance with what the

Supreme Court is soon to tell us, which would require further hearings and revisions to comply therewith.

On the Subject of Delay

Present counsel for the petitioners, who came into the case about five years after its inception, charges the Court with inordinate and unreasonable delay in the disposition of this litigation.

While, ordinarily, judges would not deign to offer a defense to such charges, we feel that we are entitled to state the facts. Obviously, that is what the Supreme Court, or any other court, would desire in the premises.

The reapportionment order by this Court in 1966, based on the 1960 census, was not appealed. It thus became final, and the elections of 1967 were held thereunder.

The 1966 reapportionment was mooted by the population changes reflected in the 1970 census. Thus the

present litigation actually is based on the 1970 census and dates from 1971, not 1965.

The Mississippi Legislative elections of 1971 were conducted under our court ordered plan, adopted that year. The plaintiffs sought to have this election set aside, but the Supreme Court denied the request, Connor v. Williams, 404 U.S. 549 (1972).

It is true that this Court took no action during the immediately ensuing years because it was simply adhering to the repeated teachings of the Supreme Court that the primary responsibility in this field rests with the state legislatures.

The 1972-1976 legislature was thus given an opportunity to enact a reapportionment plan of its own construction. The record in this case shows that the legislature made an extensive, diligent effort to construct a lawful plan of its own. For the details of this effort, please see 396 Fed. Supp. 1314-1317. The legislature finally came to the conclusion that it could not improve upon the plan adopted by this Court in 1971. It re-enacted the plan in every particular except as to Hinds, Harrison and Jackson Counties,

which had been made the subject of a Supreme Court Opinion in 1971.

This Court, responding to attacks on the 1975 plan, held hearings and entered an extensive opinion and decree, which is reported at 396 Fed. Supp. 1308. This was reversed because the Court had adopted the legislative plan, not previously submitted to the Attorney General of the United States under the Voting Rights Act of 1965, 95 S.Ct. 2003. This reversal came on June 5, 1975. The deadline to qualify for the 1975 primaries was set by law for June 5. By July 11 we had formulated a temporary plan for the 1975 elections and extended the deadlines in the altered districts. The 1975 elections were held according to this plan, concerning which the petitioners sought no Supreme Court stay or other review. The legislature so elected is now sitting.

Incidentally, on April 10, 1975, 396 Fed. Supp. 1308, we dismissed finally all prior proceedings in this case as moot and directed the plaintiffs to file an amended complaint in order that we might "begin with a fresh record, shorn of the papers accumulated during the previous ten years". There was no appeal from this

order and the amended complaint was duly filed. Thus, in actual fact, we have had the present litigation for ten months, during which we have taken all the steps above recited.

By strenuous efforts, working long hours overtime, to the point of physical exhaustion, and by conferring with the parties to this litigation personally, the temporary plan was put into effect for the 1975 elections, making the changes as to Hinds, Harrison and Jackson, which the Supreme Court had mandated in 1971, plus other changes, such as in Madison, Rankin, Marshall and other counties in Mississippi, so as to avoid where possible any possibility of impermissible dilution or minimization of black voting strength.

There has been no purposeful or unjustified delay.

Conclusion

We respectfully suggest that in the absence of any abuse of judicial discretion or judicial power, and there has been none, this Court is entitled to control

its docket and the timing of its decisions.

We are attempting to follow here the practice, uniformly followed in the Fifth Circuit, of not rushing in to decide issues that we know to be pending before the Supreme Court, which most certainly will control the outcome of the pending case.

Prayer

We pray that the motion for leave to file the petition for mandamus be denied and that this Court be left, to the best of its ability, to resolve this litigation according to the teachings of the Supreme Court.

Respectfully submitted

Jas. P. Coleman
United States Circuit Judge

For himself and the other members of the Three Judge Court

In The

Supreme Court of the United States

OCTOBER TERM, 1975

75-1184

No. _____, MISC.

PEGGY J. CONNOR, HENRY J. KIRKSEY, et al.,
Petitioners,

vs.

HONORABLE J. P. COLEMAN, UNITED STATES CIRCUIT JUDGE; HONORABLE DAN M. RUSSELL, JR., UNITED STATES DISTRICT JUDGE; HONORABLE HAROLD COX, UNITED STATES DISTRICT JUDGE, AND THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI,
Respondents.

BRIEF OF RESPONDENT-DEFENDANTS IN OPPOSITION TO MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS AND IN OPPOSITION TO PETITION FOR WRIT OF MANDAMUS

A. F. Summer
Attorney General
State of Mississippi

Giles W. Bryant
Special Assistant Attorney General

William A. Allain
Special Counsel
Post Office Box 220
Jackson, Mississippi 39205

Attorneys for Respondent-Defendants

E. L. Mendenhall, Inc., 926 Cherry St., Kansas City, Mo. 64106, 816-421-3030

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BRIEF OF RESPONDENT-DEFENDANTS IN OPPOSITION TO MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS AND IN OPPOSITION TO PETITION FOR WRIT OF MANDAMUS

Defendant state officials in this cause before the United States District Court for the Southern District of Mississippi, as respondents under United States Supreme Court Rule 31(3), respectfully submit by their attorneys, pursuant to said rule, this brief in opposition

to the motion and petition for writ of mandamus heretofore docketed with the clerk of this Court on February 19, 1976, and received by these respondents on February 20, 1976.

QUESTIONS PRESENTED

(1) Whether the District Court's injunction formulating and implementing a reapportionment plan for the 1975 legislative elections but denying the specific and extensive injunctive relief requested by petitioners, appealable under 28 U.S.C. §1253, can be reviewed by a writ of mandamus after petitioners failed to pursue their once available remedy.

(2) Whether the District Court abused its discretion in exercising its inherent power to control its docket and to time its decisions by deferring a hearing and decision on the formulation of a permanent legislative reapportionment plan for the *1979* legislative elections until this Court decides three closely related cases presently before the Court.

STATEMENT OF THE CASE

On June 5, 1975, just two and one-half weeks after the entry of the District Court's final judgment, this Court, on an application for an injunction pending appeal in *Connor* v. *Waller*, 421 U.S. 656 (1975), reversed the District Court's judgment approving the 1975 Reapportionment Plan submitted to the Court by the defendants.[1] The reversal on Section 5 grounds was, however, without prejudice to the District Court's

1. The Court did not address the merits of the plan, but reversed on the limited question of the applicability of Section 5 of the Voting Rights Act of 1965 (as amended), 42 U.S.C. §1973c.

authority to require the conduct of the legislative elections for the year 1975 under a court-ordered plan consistent with the dictates of this Court in *Mahan* v. *Howell*, 410 U.S. 315 (1973), *Connor* v. *Williams*, 404 U.S. 549 (1972), and *Chapman* v. *Meier*, 420 U.S. 1 (1975).

Immediately upon remand, the District Court allowed the United States to intervene; held extensive conferences with all counsel in regard to the mandate; required briefing by the parties; conducted evidentiary hearings; and on July 11, 1975, rendered its final injunction formulating and implementing the reapportionment plan for the 1975 legislative elections. These laborious and time-consuming tasks were performed by the District Court in the short period of thirty-six (36) days after this Court's remand decision.[2] Can it be gainsaid that the District Court acted with all deliberate speed?

On July 29, 1975, petitioners filed a motion to alter or amend the judgment. Said motion merely requested the District Court to set February 1, 1976, as a deadline for the completion of the reapportionment plan for the *1979* legislative elections. On August 1, 1975, the District Court denied the motion, expressly holding that "the Court declines to set a deadline upon its own efforts." (P.App. C) Petitioners took no action in regard to this denial.

On January 29, 1976, the District Court denied a motion filed by the *United States* on January 26, 1976,

2. After the hearings, the District Court rendered two intermediate orders prior to the July 11, 1975 injunction as the new districts were formulated, in order to give the voters and candidates of such districts as much notice as possible as to the composition of the new districts.

to establish February 10, 1976, as the date for a hearing on the plan for reapportionment for the *1979* legislative elections. By this order, the District Court deferred hearing and decision on the reapportionment plan for the *1979* legislative elections until this Court decides three pending cases: *United Jewish Organization of Williamsburgh, Inc.* v. *Wilson*, 2 Cir. 1975, 510 F.2d 512, cert. granted sub nom., *United Jewish Organization of Williamsburgh, Inc.* v. *Cary*, 44 U.S.L.W. 3279 (Nov. 11, 1975); *Beer* v. *United States*, D.C. D.C., 1974, 374 F.Supp. 363, prob. juris. noted, 419 U.S. 822, 95 S.Ct. 37, 42 L.Ed.2d 45; *Zimmer* v. *McKeithen*, 5 Cir. 1973, 485 F.2d 1297 (en banc), cert. granted sub nom., *East Carroll Parish School Board* v. *Marshall*, 1975, 422 U.S. 1055, 95 S.Ct. 2677, 45 L.Ed.2d 707.[3]

Petitioners did not join in the motion filed by the United States, nor have they to this date filed a motion requesting the District Court to alter, amend or set aside the deferral order of January 29, 1976.

Petitioners, without giving the District Court an opportunity to reconsider its deferral order of January 29, 1976, use this order as a vehicle to challenge the July 11, 1975 decree of the District Court which petitioners never sought to set aside and from which they did not appeal. Petitioners, apparently after reflection, are dissatisfied with the results of the July 11, 1975 decree and now seek to invoke the extraordinary writ of mandamus, which is nothing more than a shrouded appeal. This Court has never allowed a writ of mandamus to issue grounded upon the mere whims of petitioners.

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3. Since the entry of the deferral order, this Court has decided *East Carroll Parish School Board* v. *Marshall*, supra.

ARGUMENT

A. Petitioners Having Slept on Their Right to Appeal From the July 11, 1975 Decree of the District Court Cannot Now Correct Their Error by Resorting to the Extraordinary Writ of Mandamus.

Petitioners, having belatedly realized that they had erred in not appealing from the July 11, 1975 decree of the District Court, now seek the aid of this Court to extricate them from the judicial quagmire which they created. Their drastic plea is untimely and most improper. The real target of this motion and petition for mandamus is the July 11, 1975 decree of the District Court entered pursuant to this Court's mandate in *Connor* v. *Waller*, 421 U.S. 656 (1975), formulating and implementing a reapportionment plan for the 1975 legislative elections.

The July 11, 1975 decree of the District Court complied with this Court's mandates of *Connor* v. *Williams*, 404 U.S. 549 (1972) and *Connor* v. *Waller*, supra, although it properly denied the extensive injunctive relief requested by petitioners. The Three-Judge Court's decree was appealable under 28 U.S.C. §1253.[4] However, petitioners neglected to avail themselves of their right to appeal from this decree and now they seek to revive this extinguished right by calling upon this Court to grant a writ of mandamus, which is reserved for only the most exceptional cases where the right sought

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4. 28 U.S.C. §1253 provides: "Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act Congress to be heard and determined by a district court of three judges." (June 25, 1948, c. 646, §1, 62 Stat. 928)

to be enforced is clear and certain. *Will* v. *United States*, 389 U.S. 90 (1967).

This Court has repeatedly held that the extraordinary writ of mandamus cannot be used as a substitute for appeal. *Bankers Life & Cas. Co.* v. *Holland*, 346 U.S. 379, 383 (1953); *Parr* v. *United States*, 351 U.S. 513, 520 (1956); *Will* v. *United States*, supra. A much stronger case exists against the misuse of mandamus as a substitute for an *untimely* appeal.

It is well settled that if a party has lost his remedy in due course of law through his own fault, he will not be entitled to a writ of mandamus on the ground that his remedy at law is inadequate. *United States ex rel. Connor* v. *District of Columbia*, 61 App. D.C. 288, 61 F.2d 1015 (1932); *Calf Leather Tanners Assn.* v. *Morgenthau*, 65 App. D.C. 93, 80 F.2d 536 (1935), cert. denied 297 U.S. 718 (1936). This rule has been aptly articulated in High's treatise on *Extraordinary Legal Remedies, 3rd Ed.*, §16:

> "The fact that the person aggrieved has by neglecting to pursue his statutory remedy, placed himself in such a position that he can no longer avail himself of its benefit does not remove the case from the application of the rule, and constitutes no ground for interference by mandamus."

Petitioners' drastic efforts to salvage an appeal by mandamus is not new to this Court. In *Ex Parte Riddle*, 255 U.S. 540 (1921), on a petition for a writ of mandamus, where the petitioner sought to correct the trial judge's refusal to amend the record this Court refused to issue the writ, reasoning that:

> "He might have saved the point by an exception at the trial or by a bill of exceptions to the denial

> of his subsequent motion, setting forth whatever facts or offers of proof were material and then have brought a writ of error, Nalle v. Oyster, 230 U.S. 165, 177, 57 L.Ed. 1439, 1443, 33 Sup.Ct.Rep. 1043. *In such cases, mandamus does not lie.* Ordinarily, at least it is not to be used when another statutory method has been provided for reviewing the action below, or to reverse a decision of record. [Citations omitted]" (Emphasis added)

Also in *Ex Parte Tiffany*, 252 U.S. 32 (1920), this Court denied another similar attempt to obtain by mandamus that which might have been achieved by appeal. In denying the writ, this Court held:

> "It is well settled that where a party has the right to a writ of error or appeal, resort may not be had to the extraordinary writ of mandamus or prohibition. Ex parte Harding, 219 U.S. 363, 55 L.Ed. 252, 37 L.R.A. (N.S.) 392, 31 Sup.Ct.Rep. 324. Re Oklahoma, 220 U.S. 191, 55 L.Ed. 431, 31 Sup.Ct.Rep. 426. As the petitioner had the right of appeal to the circuit court of appeals, he could not resort to the writ of mandamus or prohibition."

As stated in the *American Law Reports Annotation*: "Right to Mandamus as Affected by Loss of Other Remedy":

> "No case has been found where in spite of culpable negligence of the applicant in his failure to avail himself of the other remedy, the writ of mandamus has been granted to compel the action he could have required by the use of the prescribed remedy." 145 A.L.R. 1044, at 1046, §IIa.

Further, the fact that petitioners' failure to appeal from the July 11, 1975 decree within the time provided by law might have been due to the ignorance of petitioners as to their right to such a remedy is not sufficient excuse to permit mandamus to issue. In *Curtis* v. *Pappas*, 5 N.J. Mis.R. 57, 135 A. 503 (1926), a state appellate court refused to grant a writ of mandamus to review the judgment of a lower court where the petitioner sought to excuse his failure to appeal on the relator's ignorance of the law respecting appeals. In denying the writ, the Court stated:

> "The petitioner has taken no action by appeal to have the judgment reviewed.
>
> * * *
>
> This Court has not the power to depart from the procedure fixed by the legislature. Appeals from judgment of district courts must be made in conformity with the statutes respecting appeals. The petitioner seeks to explain his conduct in the present case by stating that he did not know the law in this respect. This is not a sufficient excuse for his failure. He is presumed to know the law."

While petitioners try to focus this Court's attention on the January 29, 1976 deferral order, clearly the basis of their challenge is the decree entered by the District Court ordering a reapportionment plan for the 1975 legislative elections. Under the clear weight of authority, petitioners' failure to appeal from that decree, whether as a result of their negligence, design or ignorance of their right of appeal, precludes them from invoking the extraordinary writ of mandamus against the United States District Court for the Southern District of Mississippi and the three Judges who have

labored diligently and expeditiously in this vineyard of reapportionment.

B. The District Court's Deferral Order of January 29, 1976, Postponing for a Limited Duration the Formulation of a 1979 Reapportionment Plan Is an Insufficient Basis to Support Mandamus.

Petitioners disguise their challenge to the July 11, 1975 decree by attacking the January 29, 1976 order entered by the District Court deferring hearing and decision on the *1979* legislative reapportionment plan until this Court decides the three closely related cases presently before this Court.

While mandamus in exceptional cases may be an appropriate remedy to require a federal court to proceed with and determine a suit, the deferment of a hearing and determination is within the discretion of the trial court, and this discretion generally will not be interfered with by mandamus. *Ex Parte Wagner*, 249 U.S. 465 (1919). In the instant case, where the "prospective relief," temporarily delayed, is incapable of becoming operative until a period of time more than three years hence, mandamus cannot be justified. The mandate of *Connor* v. *Waller*, 421 U.S. 656 (1975) directed toward the 1975 legislative elections has been complied with by the District Court's decree of July 11, 1975, with no appeal being taken therefrom. All that remains now is for the District Court to formulate a reapportionment plan for the *1979* legislative elections. Petitioners erroneously perceive the office of mandamus. Even in the exceptional cases where the writ is invoked, it has not been used to establish rights. *Ex Parte Wagner*, supra. With the next legislative elections more than three years away; with reapportionment

legislation pending in the Mississippi Legislature; and more importantly—and the judicial basis of the deferment—with this Court's decision to review three very closely related cases, a situation is presented that not only warrants a temporary delay but demands such.

Petitioners apparently having awakened to the fact that they slumbered on their right to appeal from the July, 1975 decree, rush to this Court with this thinly veiled challenge to that decree, asserting that they are at loggerheads with the deferral order. Yet they did not even stop to go to the District Court to ask that the order be rescinded.

The questions before this Court in *Beer* v. *United States*, 419 U.S. 822 (1974), noting prob. juris. of 374 F.Supp. 363 (D.D.C. 1974) (three-judge court); *East Carroll Parish School Board* v. *Marshall*, 422 U.S. 1055 (1975), granting cert. to *Zimmer* v. *McKeithen*, 485 F.2d 1297 (5 Cir. 1973) (en banc); and *United Jewish Organization of Williamsburgh* v. *Carey*, 44 U.S. L.W. 3279 (No. 75-104) (U.S. Nov. 11, 1975), granting cert. to *United Jewish Organization of Williamsburgh* v. *Wilson*, 510 F.2d 512 (2d Cir. 1975) are closely related to the issues before the District Court in the instant case. In these three cases, the questions concerning dilution of black voting strength and maximization of black voting strength have been presented to this Court. Petitioners' claims of dilution of black voting strength, although not properly raised in the District Court until April 15, 1975, with petitioners' filing of their Amended Compiaint, pervade this entire controversy. Thus the District Court's decision to await the "badly needed guidance" from this Court in these cases is the better part of judicial husbandry, and com-

ports with rather than contravenes this Court's policy and practice of reversing and remanding a cause for reconsideration in light of this Court's decisions rendered subsequent to the lower court's decision being reviewed.

C. Petitioners' Deliberate Efforts to Frustrate the District Court's Compliance With This Court's Mandate in Connor v. Williams, 404 U.S. 549 (1972) Speak So Loud Their Assertions of Delay Cannot Be Heard.

Petitioners paint a picture of excessive and unjustified delays in this cause and complain that these delays have resulted in a denial to petitioners of the relief to which they are entitled. In painting this distorted scene, petitioners neglect to advise this Court of their persistent and continuous efforts following this Court's decision in *Connor* v. *Williams*, 404 U.S. 549 (1972), to enlarge the scope of this litigation from a consideration of only the "large multi-member districts" of Hinds, Harrison and Jackson Counties to a reconsideration of the entire statewide plan.

In *Connor* v. *Williams*, supra, this Court told the District Court and the parties to wind up the proceedings with respect to the feasibility of creating single-member districts in Hinds, Harrison and Jackson Counties so that the entire 1971 state plan could be reviewed. Four (4) days prior to the April 20, 1973 date set for the show-cause hearing,[5] petitioners filed a

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5. Petitioners erroneously state at page 16 of their petition that "no explanation was ever issued from the Court for its failure to hold the scheduled hearing." Counsel for the parties were advised by the Clerk of the District Court upon telephone inquiry to a member of the Court that the April 20, 1973 date was actually a deadline for the filing of petitioners' objections.

motion for continuance, setting forth that they needed additional time to prepare a statewide single-member district plan. While the posture of the case at that time concerned only the redistricting of Hinds, Harrison and Jackson Counties,[6] petitioners revealed their intentions by their Motion for Continuance to prolong this litigation by rehashing the entire state plan. Continuing their efforts to enlarge the scope of this litigation, petitioners on April 26, 1974, moved for leave to file a supplemental complaint, again making a challenge to the entire state plan instead of only Hinds, Harrison and Jackson Counties. Throughout the year 1974, petitioners prepared their case challenging the statewide plan through depositions, upon oral examinations, upon written questions and through request for admissions of fact and genuineness of documents.[7] It is difficult to understand how petitioners can seriously complain of delays when petitioners' actions and efforts resulted in delays and when it is quite apparent that at least at those times petitioners were not properly prepared to present their case in the manner they desired.

Petitioners radically assert that the District Court has not complied with the mandates of this Court. Apparently petitioners make this drastic allegation because they realize that only exceptional circumstances amounting to a judicial usurpation of power will justify the invocation of the remedy of mandamus against a

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6. The January 4, 1973 order deferring the appointment of a special master referred to the legislature for resolution the questions and issues concerning Hinds, Harrison and Jackson Counties only.

7. See docket entries listed on Appendix G of petitioners' petition, page 55a at pp. 76a-79a.

lower federal court. *Will* v. *United States*, 389 U.S. 90 (1967). Once before in 1971 in this case petitioners came to this Court on an application for stay with an erroneous precinct map, and obtained the stay.[8] Now petitioners come before this Court on motion and petition for mandamus with seriously erroneous assertions. The mandates of *Connor* v. *Williams*, 404 U.S. 549 (1972) and *Connor* v. *Waller*, 421 U.S. 656 (1975), while frustrated by petitioners, were clearly followed by the District Court in formulating, in the face of pending legislative elections, a statewide reapportionment plan, which plan created for the House of Representatives fifty-six (56) single-member districts, twenty-one (21) districts having no more than two representatives, four (4) districts with three and three (3) districts with four representatives. Said plan created for the Senate twenty-seven single-member districts, eleven districts with only two senators and only one district with three senators.[9]

It is apparent from the history of this litigation, as set out above, that petitioners are not concerned with the speed of this litigation but rather with the direction. Mandamus in certain exceptional circumstances may be the proper remedy to require a court to act, but this is not the end that petitioners seek by this petition. When shed of its judicial garment it is beyond cavil that petitioners are not concerned

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8. Two days after this Court entered its stay in *Connor* v. *Johnson*, 402 U.S. 690, 692 (1971), the District Court convened to carry out the directions of this Court. At that hearing, petitioners conceded that the precinct map on which they presented their claims to this Court was erroneous. See *Connor* v. *Johnson*, 330 F.Supp. 521, 522 (S.D. Miss. 1971).

9. This computation includes floterial districts.

with the District Court not acting but with the actions taken by the District Court in entering the July 11, 1975 decree formulating and implementing the *1975* legislative reapportionment plan. Petitioners, finding the front door of this Court closed because of their failure to avail themselves of their appellate rights, are now trying to enter through the emergency door. This Court should not create an exception in the law of mandamus merely to accommodate those who have bypassed, deliberately or otherwise, the proper judicial procedures.

CONCLUSION

The entry of the January 29, 1976 Order by the District Court deferring the hearing and decision on the formulation of a reapportionment plan for the 1979 legislative elections until this Court decides three closely related cases was a proper exercise of sound judicial discretion and this Court should not permit these petitioners to use this deferral order as a vehicle to challenge by mandamus that which they failed to challenge by appeal.

Respectfully submitted,

A. F. Summer
Attorney General
State of Mississippi

Giles W. Bryant
Special Assistant Attorney General

William A. Allain
Special Counsel
Post Office Box 220
Jackson, Mississippi 39205
Attorneys for Respondent-Defendants

No. 75-1184

In the Supreme Court of the United States

OCTOBER TERM, 1975

PEGGY J. CONNOR, ET AL., PETITIONERS

v.

J. P. COLEMAN, UNITED STATES CIRCUIT JUDGE, ET AL.

ON MOTION FOR LEAVE TO FILE AND ON PETITION FOR A WRIT OF MANDAMUS

BRIEF FOR THE UNITED STATES

ROBERT H. BORK,
Solicitor General,
J. STANLEY POTTINGER,
Assistant Attorney General,
BRIAN K. LANDSBERG,
JOHN C. HOYLE,
JESSICA DUNSAY SILVER,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

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ON MOTION FOR LEAVE TO FILE AND ON PETITION FOR A WRIT OF MANDAMUS

BRIEF FOR THE UNITED STATES

This brief is submitted by the United States[1] in response to petitioners' Motion for Leave to File Petition for a Writ of Mandamus.

OPINION BELOW

The January 29, 1976, order of the district court is reprinted as Appendix A to the petition (Pet. App. 1a-2a).

JURISDICTION

This Court's jurisdiction is invoked pursuant to 28 U.S.C. 1651(a).

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[1] The United States was permitted by the district court to intervene as a party plaintiff on June 11, 1975 (Pet. App. 83a).

QUESTION PRESENTED

Whether mandamus should issue to compel the district court to proceed to formulate a reapportionment plan for the Mississippi legislature and to order that any necessary special elections be held prior to the convening of the 1977 legislative session.

STATUTORY PROVISION INVOLVED

28 U.S.C. 1651(a) provides:

> The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

STATEMENT

A. INTRODUCTION AND SUMMARY

Plaintiffs have been engaged in litigation regarding the apportionment of the Mississippi legislature since October 1965. The district court, in 1967 and in 1971, and this Court, in 1975, invalidated reapportionment plans devised by the state, and, as a result, the district court has been required to formulate its own plans for the 1967, 1971, and 1975 elections. In 1971 and 1975, the district court devised a temporary plan for the upcoming elections because the court concluded that lack of time, resources, and necessary data precluded formulation and implementation of a satisfactory final decennial plan prior to the elections.

In formulating the plan used for the 1975 elections, the district court acknowledged the inadequacies of its formulation and, thereafter, indicated an intention to replace that plan with a final plan by February 1976,

so that any special elections could be held coincident with the November 1976 presidential election. That court, however, has now ordered a halt to further proceedings until this Court decides three pending cases.[2] The 1977 session of the Mississippi legislature is scheduled to begin on January 4, 1977. The next regularly scheduled elections for the legislature are to be held in 1979.

B. PROCEDURAL HISTORY

Plaintiffs brought suit in 1965 seeking reapportionment of the Mississippi legislature on grounds that the current apportionment violated the Fourteenth and Fifteenth Amendments. In July 1966, the three-judge district court invalidated the 1962 apportionment of the legislature. *Connor* v. *Johnson,* 256 F. Supp. 962 (S.D. Miss.). That same year, the legislature enacted a new plan, and on March 3, 1967, the court held that plan unconstitutional and reapportioned the Senate and House of Representatives for the 1967 elections. 265 F. Supp. 492.

In 1971, the state enacted another reapportionment plan. That plan was held unconstitutional on May 18, 1971, and the district court formulated a plan to

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[2] *United Jewish Organizations of Williamsburgh, Inc.* v. *Carey,* No. 75–104, certiorari granted, November 11, 1975; *Beer* v. *United States,* No. 73–1869, probable jurisdiction noted, 419 U.S. 822; *East Carroll Parish School Board* v. *Marshall,* No. 73–861, certiorari granted, 422 U.S. 1055. This court rendered its decision in *East Carroll Parish* on March 8, 1976, and its decision in *Beer* on March 30, 1976. *United Jewish Organizations of Williamsburgh,* however, is not scheduled for argument until next Term.

govern the 1971 elections. 330 F. Supp. 506. Most of the House districts and almost half of the Senate districts were constituted as multi-member districts.

The 1971 court-formulated plan was not final with respect to three counties: Hinds, Harrison, and Jackson. *Id.* at 519. Those counties accounted for one-fifth of the seats in both houses of the legislature. Although the district court expressed its reluctance over the use of multi-member districts in those counties because each would elect four or more senators or representatives, it concluded that there was not sufficient time before the 1971 elections to subdivide the three counties into single-member districts. *Ibid.* The court stated that it expected to appoint a special master to determine whether such subdivision would be feasible for the 1975 and 1979 elections. *Ibid.*

On a motion for a stay, this Court considered the plan formulated by the district court and on June 3, 1971, stayed the court's judgment until June 14, 1971. *Connor* v. *Johnson,* 402 U.S. 690. This Court directed the district court, "absent insurmountable difficulties, to devise and put into effect a single-member district plan for Hinds County by that date." *Id.* at 692. The district court did not divide Hinds County into single-member districts because it found that there were insurmountable difficulties. 330 F. Supp. 521.

After the 1971 elections, this Court considered an appeal challenging the constitutionality of the 1971 court-formulated reapportionment plan. *Connor* v. *Williams,* 404 U.S. 549. Noting, with approval, that the district court had retained jurisdiction over plans

for Hinds, Harrison and Jackson Counties and had stated that a special master would be appointed in January 1972 to consider subdividing those counties into single-member districts, this Court directed that "[s]uch proceedings should go forward and be promptly concluded." *Id.* at 551. This Court declined to consider the prospective validity of the 1971 plan until proceedings were completed in the district court and a final judgment was entered respecting the entire state. *Id.* at 551–552. Without disturbing the 1971 elections, this Court vacated the district court judgment and remanded for proceedings consistent with its opinion. *Id.* at 552. The district court did not appoint a special master (Pet. App. 73a–74a).

The Mississippi legislature, in April 1973, adopted a reapportionment plan. *Connor* v. *Waller,* 396 F. Supp. 1308, 1310. Plaintiffs filed timely objections to the 1973 plan and requested a hearing. *Id* at 1310; Pet. App. 76a. The hearing was held in February 1975. 396 F. Supp. at 1310. After the hearing, the state, in April 1975, adopted new legislation (*id.* at 1311), differing from the 1971 court-formulated plan only with respect to Harrison, Hinds and Jackson Counties. Despite the changes, these counties remained multi-member districts. The district court dismissed plaintiffs' complaint and directed the filing of an amended complaint addressing the 1975 legislation. *Id.* at 1311. Plaintiffs promptly filed an amended complaint, and in May 1975 the district court entered judgment approving the 1975 legislative plan. *Connor* v. *Waller,* 396 F. Supp. 1308.

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On June 5, 1975, this Court reversed the three-judge court decision of May 22, 1975. *Connor* v. *Waller,* 421 U.S. 656. This Court held that the 1975 legislative acts would not be effective as laws until they were cleared in accord with Section 5 of the Voting Rights Act of 1965, 79 Stat. 439, as amended, 42 U.S.C. 1973c, and that the district court erred in deciding constitutional challenges to the acts based upon claims of racial discrimination. The reversal of the district court decision was, however,

> without prejudice to the authority of the District Court, if it should become appropriate, to entertain a proceeding to require the conduct of the 1975 elections pursuant to a court-ordered reapportionment plan that complies with this Court's decisions in *Mahan* v. *Howell,* 410 U.S. 315 (1973), *Connor* v. *Williams,* 404 U.S. 549 (1972), and *Chapman* v. *Meier,* 420 U.S. 1 (1975).

421 U.S. at 656.

On June 9, 1975, Mississippi submitted the 1975 acts to the Attorney General for his consideration under Section 5. The Attorney General, on June 10, 1975, interposed an objection to the acts on the ground that Mississippi had failed to show that they did not have the purpose and would not have the effect of denying or abridging the right to vote on account of race (Pet. 6 n. 1).

The district court then held a hearing on June 20, 1975, to determine under what plan the 1975 elections should be held (Pet. App. 84a). The original plaintiffs and the United States objected to the composition of certain legislative districts as drawn in the 1971 court

plan and the 1975 legislative plan on the ground that those districts unconstitutionally diluted black voting strength. The original plaintiffs also objected to the inclusion of multi-member districts in a court-fashioned plan and to malapportioned districts.

In an order dated June 25, 1975, the district court advised the parties that it intended to formulate a "temporary plan for the election of Senators and Representatives for the 1975 elections ONLY," finding that there was insufficient time to formulate a final plan prior to the August 1975 primaries (Pet. App. 84a–85a). The court stated (Pet. App. 85a), however, that it intended without unnecessary delay to formulate a permanent plan for the election of legislators in the quadrennial elections of 1979. When that shall have "been accomplished, special elections may be ordered in those legislative districts where required by law, equity, or the Constitution of the U.S."

The court also requested that the parties amplify their objections to the existing plans before it implemented a temporary plan (Pet. App. 84a). After the parties submitted such objections, the court, by orders dated July 8, 1975, and July 11, 1975, formulated the temporary plan (Pet. App. 26a–54a). The court also ordered the parties to file alternative plans for the permanent reapportionment of the state legislature (Pet. App. 52a–53a).

Private plaintiffs, on July 21, 1975, and the United States, on July 24, 1975, filed motions to alter or amend judgment, pursuant to Rule 59, Fed. R. Civ. P. (Pet. App. 6a–7a, 8a–23a). Both motions requested

that the district court establish a specific date by which a permanent plan would be established and a definite schedule for special elections. Private plaintiffs asked the district court to order into effect a permanent plan by February 1, 1976, and to order such special elections as are necessary to cure defects in the temporary plans, such elections to coincide with the November 1976 presidential elections. As grounds for those motions, the plaintiffs detailed the legal deficiencies they found in the temporary plan.

By order of August 1, 1975, the district court ruled on plaintiffs' motions (Pet. App. 4a–5a). While declining to establish a deadline for approval of a final plan, the court emphasized "its firm determination to have this matter out of the way before February 1, 1976," and its expectation that it would "direct that [any required special elections] shall be held in conjunction with the 1976 Presidential election so as to save the expense of special elections, as far as possible" (*ibid.*).

In light of the proximity of the August 12 primary elections, the district court's indication that it intended to take prompt action on formulation of a final plan and scheduling special elections, if necessary, and this Court's prior indication, in *Connor* v. *Williams, supra,* that it wished to rule only on a final plan, the United States did not appeal from the district court's order establishing a temporary plan.

In October 1975, private plaintiffs and the United States submitted proposals for a final plan (Pet. App. 89a–90a). On October 24, 1975, the district court

ordered the United States to compile and submit to the court data respecting the November elections (Pet. App. 89a–90a). When the data were compiled, the United States moved, on January 26, 1976, to establish February 10, 1976, as the date for hearing on the proposed permanent plan (Pet. App. 3a). The court, on January 29, 1976, denied the motion, deferring further hearing and decision until this Court rules in three pending cases (Pet. App. 1a–2a). See n. 2, *supra.*

C. THE TEMPORARY PLAN

The temporary plan (Pet. App. 26a–54a), formulated by the district court's orders of July 8 and July 11, 1975, thus remains in effect. The plan for the Senate contains 14 multi-member districts,[3] electing 53.85 percent of the Senate membership (28 of 52 Senators) (Pet. App. 46a–47a). For the House 42 of 84 districts are multi-member, electing 72.13 percent of the House membership (88 of the 122 representatives) (Pet. App. 48a–52a). Five Senate districts,[4] electing eight Senators, have black voting age population majorities.[5] In the House, twelve

[3] Districts which are subdistricts of a floterial district (but not the floater district) are included as multi-member districts.

[4] Districts 10, 11, 12, 13, 15.

[5] These statistics are found in and computed from United States Bureau of the Census, *1970 Census of Population*, Vol. I, Characteristics of Population, Part 26, Mississippi, Table 35 Age by Race and Sex for Counties, and United States Bureau of the Census 1970 Summary Tapes, Files A and B. Out of 82 counties in Mississippi, the black voting age population exceeds 50 percent in 17. The voting age population of the state is 30.94 percent black.

districts, electing 20 representatives, have black voting age majorities.[6] Of these districts, two in the Senate and two in the House have black voting age population majorities of less than 52 percent.

The temporary plan is similar to the 1971 court-ordered plan—vacated by this Court so that a permanent plan could be formulated—and the 1975 legislative plan—objected to by the Attorney General under Section 5. For the Senate, it varies from the 1971 court plan and the 1975 legislative plan (which are identical with respect to the Senate) in only two districts.[7] With respect to the House of Representatives, the temporary plan makes changes from the 1971 court plan in thirteen districts[8] and from the 1975 legislative plan in twelve districts.[9]

For several districts, the court acknowledged that additional changes might be necessary in the formula-

[6] Districts 3A, 11, 12, 13, 14, 16, 17, 28, 31C, 31D, 31F, 32.

[7] Districts 22 (Hinds County) and 27 (Jones, Covington, Jefferson Davis, Lawrence, and Marion Counties).

[8] Districts changed were: 1, 3, 4, 11, 23, 25, 28, 31, 35, 42, 43, 45, 46.

[9] The districts changed were the same as those listed in footnote 8, *supra*, except there was no change for District 45.

The changes made by the court from the earlier plans failed to satisfy most of the objections which the United States presented to the court. The United States objected to 16 Senate Districts (Districts 1, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 22, 23, 24, 25). The temporary plan changed only District 22 (Hinds County).

The United States also presented to the district court objections to 16 districts for the House of Representatives (Districts 3, 9, 14, 15, 17, 23, 24, 28, 29, 30, 32, 33, 34, 37, 39, 40). The court made changes in only three of those districts (Districts 3, 23, 28).

tion of a final plan. The court made specific statements about five House districts that indicate that it found inadequacies, but was not fashioning new districts either because adequate data were not then available, or the court had been unable to devise a satisfactory plan for the particular district.[10] It also indicated that

[10] District 14: "The Department of Justice says that this County could be divided into three single-member districts in such a fashion as to improve the chances of electing a black representative, but for lack of adequate data conforming to precinct lines this cannot now be done. The Court expects to give the division of Bolivar County further study for the permanent plan." (Pet. App. 33a–34a.)

District 15: "In the formulation of a permanent plan, with adequate data, this district should include some, if not all, single-member districts." (Pet. App. 36a, 39a.)

District 17: "With appropriate data the district should be susceptible to division, reducing its three member status." (Pet. App. 34a.)

District 24: "Kemper County is 54.84% black and is combined in a four Representative district [no. 24] with Lauderdale, with one of the four being required to be a resident of Kemper. The size of this district must be reduced."

"The legislative district status of these two geographically isolated black counties [Kemper and Noxubee] was the subject of extended discussion in the informal court-counsel conference of July 7, 1975. * * * No presently viable plan was suggested. * * * We have concluded that there are no presently viable answers to this peculiar situation, so we leave it as it is, with top priority when we come to consider the permanent plan." (Pet. App. 36a, 41a.)

District 30: "Claiborne might be joined with some identifiable portion of Warren County for a single-member district. However, by order of a three-judge court in a reapportionment case, Warren County presently has no validly existing Supervisor Beats." (Pet. App. 34a.)

the change it made for one House district was not sufficient for the final plan."[11]

Furthermore, the court stated that it was unable to devise a satisfactory plan for Senate districts 18 and 19 prior to the 1975 elections (Pet. App. 44a). Regarding Senate district 25, the court stated that there was "not enough danger of [racial dilution] to justify altering the district within less than thirty days of the election" (Pet. App. 45a).

Due to this Court's mandate in *Connor* v. *Williams*, 404 U.S. 549, that the district court retain jurisdiction to consider the feasibility of devising single-member districts for Hinds, Harrison and Jackson Counties, the district court treated these counties separately. But the temporary plan does not provide all single-member districts for these counties. Harrison County elects three Senators at-large, and Jackson County elects two Senators at-large (Pet. App. 47a).

ARGUMENT

THE DISTRICT COURT SHOULD BE REQUIRED TO ENTER A FINAL REAPPORTIONMENT PLAN AND ORDER SPECIAL ELECTIONS

More than ten years have passed since plaintiffs initiated this litigation seeking reapportionment of

[11] Regarding House district 23, the court said (Pet. App. 40a–41a):
"Noxubee County is now combined with Oktibbeha County for the election of a Senator and for the election of two Representatives. As to the election of a Representative, this is not satisfactory because Oktibbeha County has 28,752 people, twice that of Noxubee. Noxubee is 65.77% black, Oktibbeha is 65.21% white." See also the next to the last paragraph of footnote 10, *supra*, which is applicable to district 23.

the Mississippi legislature. All involved, including the court below, recognize that until the legislature is reapportioned consistently with the Fourteenth and Fifteenth Amendments, the people of Mississippi will continue to suffer irreparable injury to their rights as voters. Yet every effort to bring this litigation to a final judgment has been frustrated. In the meantime, temporary plans have been implemented which perpetuate the violations the suit was intended to remedy. The latest development—a refusal to bring the case to final decision pending further guidance from this Court in other cases—is consistent with this pattern. Like past delays, it is wholly unjustified.

Whatever might have been said earlier about the impropriety of the district court's refusal to decide this case, the fact is that two of the three decisions it was awaiting have been announced. The third case will not be decided until next Term, and is in any event unlikely to provide substantial further guidance for this case.

East Carroll Parish School Board v. *Marshall,* No. 73–861, was decided on March 8, 1976. It highlights the inadequacy of the temporary plan the district court has left in effect. That plan provides for numerous multi-member districts. *East Carroll* reemphasizes the previously established doctrine that in court ordered reapportionment, "single-member districts are to be preferred absent unusual circumstances" (slip op. at p. 4).

Beer v. *United States,* No. 73–1869, was decided on March 30, 1976. It involved the standards for testing

the redistricting of city council districts under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. It did not depart in any way from previous decisions establishing the constitutional standards which govern the reapportionment of a state legislature under the Fourteenth and Fifteenth Amendments.

East Carroll Parish and *Beer* thus contain nothing to justify delay by the district court in carrying out its responsibility to apply this Court's decisions so as to bring about a constitutionally valid reapportionment of the Mississippi legislature.

United Jewish Organizations of Williamsburgh, Inc. v. *Carey*, No. 75–104, certiorari granted, November 11, 1975 (hereinafter, "*Williamsburgh*"), will not be argued until next Term. This fact alone renders unjustified any further delay in the instant case. For if a final plan is not adopted and special elections held pursuant to it by the November 1976 presidential elections, it will be 1978 or later before the people of Mississippi have a properly constituted legislature. The irreparable injury the state's voters will suffer by further delay in the implementation of a lawfully adequate reapportionment plan far outweighs anything that might be gained by waiting for the decision in *Williamsburgh*. That case involves a challenge by a particular element of the white majority in Kings County, New York, to a redistricting plan adopted by the New York legislature which splits the plaintiffs' ethnic community between two assembly districts, each of which has a non-white majority, and between two state senate districts, one of which has a non-white

majority. See *United Jewish Organizations of Williamsburgh, Inc.* v. *Wilson*, 510 F. 2d 512, 517–518 (C.A. 2). No similar claim is involved in the present case.

Because reapportionment litigation involves fundamental personal rights,[12] such litigation should not be held in limbo—particularly where, as here, the existing apportionment has been shown to violate established constitutional rights—while additional, non-controlling cases are presented in this Court. Every decennial census creates new redistricting problems. Congressional elections are held every two years and state legislative elections may be held biennially or, as in Mississippi, quadrennially. For these reasons, the district courts should decide reapportionment litigation promptly in the light of existing precedents. Otherwise the rights of the electorate to fair and effective representation under the one-person, one-vote rule, and to freedom from invidious racial discrimination, dilution or minimization or cancellation of minority voting strength,[13] may be lost while litigation drags on, one election succeeds another, and improperly apportioned legislatures continue to sit. That is the present situation in Mississppi.

There is no mystery about the constitutional and equitable requirements for reapportionment of a state legislature by a court. The basic criteria are estab-

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[12] *Reynolds* v. *Sims*, 377 U.S. 533, 554–555, 565–568.

[13] *White* v. *Regester*, 412 U.S. 755, 765–770; *Whitcomb* v. *Chavis*, 403 U.S. 124, 143–144; *Fortson* v. *Dorsey*, 379 U.S. 433, 439; *Burns* v. *Richardson*, 384 U.S. 73, 86–89; cf. *Gomillion* v. *Lightfoot*, 364 U.S. 339.

lished. They require reasonable numerical equality of resident populations among the districts prescribed, with allowance for deviation made necessary by geographic features and the boundaries of political subdivisions;[14] avoidance of any action which invidiously cancels out, dilutes or minimizes the voting strength of minority groups in the entity being restructured;[15] and, in any court-ordered plan, a preference for single-member districts, absent a clear showing of special justification for the use of multi-member districting. *East Carroll Parish, supra.*

There is no reason why these criteria cannot be implemented in Mississippi. The need for prompt decision is urgent. The temporary plan adopted by the district court is inconsistent with *East Carroll Parish,* permits population variances among districts sharply departing from the criteria approved by this Court under the Fourteenth Amendment, and continues "invidiously to cancel out or minimize the voting strength" of black voters in Mississippi. *White* v. *Regester,* 412 U.S. 755, 765. Because Mississippi has a long history of excluding blacks from the political process (*United States* v. *Mississippi,* 380 U.S. 128), the district court has a duty to decree relief "which will so far as possible eliminate the discrimi-

[14] Compare *Mahan* v. *Howell*, 410 U.S. 315, and *Gaffney* v. *Cummings*, 412 U.S. 735, with *Whitcomb* v. *Chavis*, 403 U.S. 124, 161–163, *Swann* v. *Adams*, 385 U.S. 440, and *Kilgarlin* v. *Hill*, 386 U.S. 120.

[15] See cases cited in n. 13, *supra.*

natory effects of the past as well as bar like discrimination in the future." *Louisiana* v. *United States,* 380 U.S. 145, 154.

Nevertheless, with the exception of Hinds County, the district court has focussed only on those districts that include counties with a black population majority. It apparently assumes that there can be no unconstitutional dilution of black voting strength in white majority counties. But *White* v. *Regester, supra,* teaches that where there is a history of discrimination and racial bloc voting, submergence of a substantial racial minority population into a larger majority-dominated district, by means of multi-member districting, may improperly dilute the voting strength of the racial minority. Indeed, the district court itself recognized that its temporary plan did not fully eliminate dilution. See Statement, pp. 11–12, *supra.* Yet, despite its acknowledgement that six house districts (Numbers 14, 15, 17, 23, 24, and 30) involve improper dilution of minority voting strength, it has delayed fashioning new plans for them. Moreover, the temporary plan appears to contain deviations of more than 62.963 percent in the House and 20.292 percent in the Senate for floterial districts, and 19.729 percent in the House, and 18.903 percent in the Senate, for non-floterial districts (Pet. 6–7). Since "[a] court ordered plan * * * must be held to higher standards than a State's own plan" (*Chapman* v. *Meier,* 420 U.S. 1, 26), the district court has an obligation to elucidate why such variation is justified.

Given the inadequacies of the temporary plan, special elections are required. *Town of Sorrento* v. *Reine,* No. 75–93, decided April 26, 1976; *Hadnott* v. Amos, 394 U.S. 358.[16] Indeed, the district court has indicated that it would order special elections in districts which were improperly constituted (Statement, p. 7, *supra*). Unless a final plan is formulated promptly and special elections held thereunder, the people of Mississippi will continue to be denied a properly constituted legislature for a substantial additional time. The district court's failure to take the steps necessary to prevent this result frustrates the purpose of this Court's earlier decision in this case, *Connor* v. *Williams,* 404 U.S. 549, directing the formulation of a final, reviewable plan.

In *Connor* v. *Williams, supra,* this Court vacated the district court's judgment implementing the 1971 court-formulated reapportionment plan insofar as it applied to the 1975 elections. The Court declined at that time to determine the constitutionality of that plan because it was incomplete. *Id.* at 551. The Court's mandate contemplated that the district court would formulate a final plan for the 1975 elections which could then be reviewed here. But the district court did not attempt to formulate a final plan for 1975. Instead, when the Mississippi legislature reapportioned itself in 1973 and 1975, the district court

[16] See also *Keller* v. *Gilliam*, 454 F. 2d 55 (C.A. 5); *Toney* v. *White*, 488 F. 2d 310 (C.A. 5) (*en banc*); *Hall* v. *Issaquena County*, 453 F. 2d 404 (C.A. 5); *Hamer* v. *Campbell*, 358 F. 2d 215 (C.A. 5), certiorari denied, 385 U.S. 851.

directed its attention to those enactments and approved the 1975 legislation. 396 F. Supp. 1308. The district court's judgment approving the 1975 legislative plan was then vacated in *Connor* v. *Waller,* 421 U.S. 656, because that plan had not been precleared under Section 5 of the Voting Rights Act. At least by then it became incumbent upon the district court to formulate a final plan of its own. Whether it could have done so in time for the 1975 legislative elections in Mississippi is now a moot question. There has, however, been adequate time for the district court to formulate a plan reapportioning the state legislature, and to order special elections under that plan which will coincide with the November 1976 presidential and congressional elections. There is still time for it to do so under an expedited schedule.

As matters now stand, the district court refuses to decide the long-pending case before it, thereby frustrating this Court's mandate in *Williams.* The decisions in *East Carroll Parish* and *Beer,* and the lack of any reason to believe that the decision in *Williamsburgh* will provide meaningful guidance here, demonstrate that there is no reason for further delay. We do not believe, however, that this Court need issue a writ of mandamus, even though its issuance would be justified on this record. Cf. *Thermtron Products, Inc.* v. *Hermansdorfer,* No. 74–206, decided January 20, 1976. Denial of the writ with an explanation that the district court is expected to perform its duty forthwith would presumably be sufficient. Either by that means

or by issuance of the writ, the district court should be instructed to proceed to a prompt decision and decree ordering special elections.

CONCLUSION

For the reasons stated, the motion for leave to file a petition for a writ of mandamus should be granted, and the district court should be instructed to adopt a final plan for the reapportionment of the Mississippi legislature, and to order special elections to coincide with the November 1976 presidential and congressional elections, or to be held at the earliest practicable date thereafter.

Respectfully submitted.

ROBERT H. BORK.
Solicitor General.

J. STANLEY POTTINGER,
Assistant Attorney General.

BRIAN K. LANDSBERG,
JOHN C. HOYLE,
JESSICA DUNSAY SILVER,
Attorneys.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1184

PEGGY J. CONNOR, ET AL.,
Petitioners,

—VS—

HONORABLE J. P. COLEMAN,
United States Circuit Judge, ET AL.,
Respondents.

On Motion for Leave to File Petition for Merit of Mandamus and Petition for Writ of Mandamus

REPLY BRIEF FOR PETITIONERS

FRANK R. PARKER
HERMAN WILSON
Lawyers' Committee for Civil Rights Under Law
233 North Farish Street
Jackson, Mississippi 39201
(601) 948-5400

PAUL R. DIMOND
WILLIAM E. CALDWELL
Lawyers' Committee for Civil Rights Under Law
733 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 628-6700

Attorneys for Petitioners

WILSON - EPES PRINTING CO., INC. - RE 7-6002 - WASHINGTON, D. C. 20001

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REPLY BRIEF FOR PETITIONERS

The response of the Respondent District Judges (Coleman, C.J., Russell and Cox, D.J.) and brief of the state official defendants fail to answer plaintiffs' contentions in their Petition for Writ of Mandamus that the January 29, 1976 stay order of the District Court (1) amounts to an obstruction of the prior mandates of this Court and (2) causes the petitioners immediate and irreparable injury by further delay of the prompt and speedy effectuation of their declared voting rights.

1. Petitioners do not Seek the Writ of Mandamus as a Substitute for Appeal.

Defendant state officials make much of (Brief, pp. 5-9), and the respondent judges advert to (Response, p. 5), the fact that the plaintiffs failed to appeal from the District Court's Order of July 11, 1975, establishing "temporary" legislative districts "for the year 1975 only." The defendant state officials argue (Brief, pp. 5-9) that petitioners seek this writ of mandamus as a substitute for their failure to appeal from the District Court's July 11, 1975 order.

The Mississippi Attorney General's argument, which is not advanced by respondent judges, is spurious and misses the point of the Petition. The writ of mandamus is sought, not as a substitute for an appeal, but in aid of the appellate jurisdiction of this Court in a case in which that jurisdiction has been defeated by the unauthorized action of the lower court, *Ex parte United States*, 287 U.S. 245, 246 (1932), and to enforce the prior mandates of this Court which have been disregarded by the District Court. *Bucolo* v. *Adkins*, 44 U.S.L.W. 3500 (U.S. March 8, 1976); *United States* v. *Haley*, 371 U.S. 18 (1962). *See also McClellan* v. *Carland*, 217 U.S. 268, 279 (1910) (Mandamus should issue to vacate stay order which denies Federal rights).

The District Court's order of July 11, 1975—under this Court's January 24, 1972, decision in this case, *Connor* v. *Williams*, 404 U.S. 549 (1972)—was only a temporary plan for the 1975 elections only and did not purport to be a final order for a state-wide plan.[1] Im-

[1] In the 1971 appeal decided in January, 1972, *Connor* v. *Williams*, *supra*, this Court declined to rule upon the "substantial questions" presented by plaintiffs "concerning the constitutionality of the District Court's plan as a design for permanent apportionment" (404 U.S. at 550). The Court gave two reasons for declining to decide the questions presented: (1) the District Court's 1971 order established only "temporary" districts for the 1971 elections only and purported to retain jurisdiction for the purpose of inquiring into the feasibility of creating single-member districts for Hinds, Harrison, and Jackson Counties (*id.* at 551), and (2) the Court indicated that if it were to consider the substantial questions presented, "it would be preferable to have before us a final judgment with respect to the entire state" (*id.* at 551-52). In other words, in 1972 this Court indicated to the plaintiffs that it did not want to decide the questions presented in the Mississippi legislative reapportionment case piece-meal and, given that the District Court had retained jurisdiction for the purpose of establishing single-member districts in the State's most populous counties, the Court would decline to review the case on the merits until a final judgment had been entered.

The District Court's July 11, 1975 order placed the case in a procedural posture analogous to that of 1971. The 1975 order established only "temporary" legislative districts "for the year 1975 only" (Petition, App. F, p. 26a). The District Court expressed dissatisfaction with certain of the multi-member districts created, but indicated that time was too short to make more extensive changes (*id.*, pp. 28a, 33a-45a). The District Court retained jurisdiction by ordering the parties within 90 days to file proposed plans "for the permanent reapportionment of the legislature" (*id.*, p. 53a). (We would also note, in any event, that the July 11 order does not represent an appealable *judgment*. Rule 58, F.R.Civ. P.; *United States* v. *Indrelunas*, 411 U.S. 216, 222 (1973).)

mediately, both the private plaintiffs and the United States as plaintiff-intervenor pointed out the inadequacies of the July 11 order as a permanent plan (Petition, Apps. D and E, pp. 6a-25a) and moved the court to establish a timetable for approval of a permanent plan and remedial special elections to cure the unlawful features of the temporary plan. On August 1, 1975, the District Court, in effect, granted the substance of these motions and assured the parties of its "firm determination to have this matter out of the way before February 1, 1976." (Petition, App. C, p. 4a).

In explicit terms, the District Court had thereby assured the parties that it would act promptly to enter a final judgment, *i.e.*, a permanent state-wide plan. The plaintiffs, relying on the District Court's own represen-

tations concerning the timetable for promulgation of a complete plan to enforce the prior mandates of this Court, felt constrained at that time to give the District Court every reasonable opportunity to act to enforce this Court's prior mandates itself before again petitioning this Court.

In timely fashion, pursuant to the timetable set by the District Court, the parties submitted permanent plans for review, hearing and decision by the District Court. If the District Court had then adhered to its original timetable and ordered a permanent plan by February 1, 1976, there would have been a final judgment for a permanent, state-wide plan from which any dissatisfied party could have secured timely review by an appeal under the terms of this Court's opinion in *Connor* v. *Williams*. (See note 1, *supra*). Instead, the District Court on January 29, 1976 deferred any final decision on a permanent plan (Petition, App. A, pp. 1a-2a) and thereby foreclosed its enforcement of the prior mandates entered by this Court.

Hence, the necessity of this petition for mandamus is manifest. By in effect rescinding the timetable established in its August 1 order by entering, *sua sponte*, its January 29, 1976 stay order, the District Court has deprived the petitioners of (1) the enforcement of the prior mandates of this Court *and* (2) an opportunity for a meaningful appeal, *i.e.*, from the promised final judgment. The purpose of this mandamus petition is *not* to appeal the July 11 temporary plan but rather to compel the District Court to proceed and enter the "final judgment with respect to the entire State" which this Court mandated in January, 1972, in accord with the criteria for a court-ordered plan which this Court mandated on June 5, 1975. *Connor* v. *Waller*, 421 U.S. 656 (1975).

2. Petitioners in This Proceeding Seek No Relief In the Nature of An Appeal From the District Court's July 11, 1975 Order.

Contrary to the defendant state officials' contentions (Brief, pp. 4-9), this proceeding in no way constitutes an attempt to correct any error of the District Court's July 11, 1975 order, but rather was filed simply to compel the District Court to comply with its own self-imposed timetable to obtain the minimum relief required to comply with this Court's prior mandates. As early as June 25, 1975, twenty days after this Court's decision in *Connor* v. *Waller*, 421 U.S. 656 (1975), the District Court entered an order directing the parties to file memoranda on their objections to the existing legislative districts and "judicially inform[ing]" the parties (1) that since time was too short to devise a "permanent plan" for the 1975 legislative elections, the Court intended to devise a "temporary plan . . . for the 1975 election ONLY," (2) that subsequently the District Court "proposes without unnecessary delay to formulate a permanent plan" for the 1979 legislative elections and (3) when that is accomplished, "special elections may be ordered in those legislative districts where required by law, equity, or the Constitution of the United States." Order of June 25, 1975, p. 3 (attached).[2]

Subsequently, on July 8, 1975, the District Court entered an opinion containing its formulation of legislative districts "on a temporary basis for the 1975 elections only" (Opinion of July 8, 1975, p. 23), and indicated again:

> "Thereafter [after the 1975 elections], in the due course of events, as speedily as judicially possible, we propose to set up a permanent plan for the election of Senators and Representatives in plenty of time for it to be submitted to the scrutiny of the

[2] See Docket Entries, Petition, App. G, pp. 84a-85a.

> Supreme Court of the United States and be fully operative far enough in advance of the election year of 1979 in order that the confusion which has reigned rampant this year will not arise to plague voters, candidates, and courts alike." *Id.*, p. 16.

The District Court in that order indicated that there was little likelihood that plaintiffs would be injured by legislative elections based on the proposed temporary plan for the reason that any inadequacies in the temporary plan could be cured by special elections later:

> "We have determined that no irreparable injury will occur by allowing the 1975 legislative elections to proceed under a temporary plan on the dates provided by law. If the permanent plan, later to be adopted, manifests that the temporary plan has caused such an injury the same will be corrected by special elections as provided by Mississippi law." Order of July 8, 1975, p. 15.

Both of these orders were incorporated by reference in the District Court's Order of July 11, 1975 (Petition, App. F., p. 26a).

Then in its Order of August 1, 1975, following plaintiffs' and plaintiff-intervenor United States' motions to amend the Order of July 11, 1975, the District Court declined to set a firm deadline for a permanent plan, but did indicate that it "expects to have such a plan [a permanent plan] approved before February 1, 1976" and expressed and reiterated its "firm determination to have this matter out of the way before February 1, 1976" (Petition, App. C, p. 4a). And, as to "all instances in which a special election may be required," the District Court indicated that it "expects to direct that the same shall be held in conjunction with the 1976 Presidential election" (*id.*, p. 5a).

Thus, this proceeding does not in any way constitute an attempt to "appeal" or "challenge" (Def. Br., p. 4)

the District Court's July 11, 1975 Order or to "establish rights" (*id.*, p. 9) beyond those contained in the prior mandates of this Court. Indeed, we ask here for *nothing* more than that which the District Court indicated in the summer of 1975 it would order by February 1, 1976. In three separate decrees of June 25, July 8, and August 1, 1975, the District Court specifically indicated that it would formulate a permanent plan "without unnecessary delay" (Order of June 25), "as speedily as judicially possible" (Order of July 8), and "before February 1, 1976" (Order of August 1). Further, in each of those three decrees, the District Court expressly stated that it would order special elections on the basis of the legislative districts established by the permanent plan prior to the 1979 regular legislative elections "where required by law, equity, or the Constitution of the United States" (Order of June 25), to remedy any injury caused by implementation of the temporary plan for the 1975 elections (Order of July 8), and "in conjunction with the 1976 Presidential election" (Order of August 1). Thus, all the petitioners are asking in this proceeding is that the District Court follow its own self-imposed timetable, and that it grant the relief to which the District Court itself finally recognized the plaintiffs are entitled pursuant to the prior mandates of this Court.

3. The Reasons Advanced in Support of the January 29 Stay Order Are Totally Inadequate and Without Foundation.

A. The contentions of the respondent judges and the defendant state officials in their briefs that delay is justified to permit resolution by this Court of pending cases presenting the question of dilution of Black voting strength completely distort the present posture of this case and serve only to emphasize the point that the District Court has fundamentally misconstrued the directive of this Court in its mandate of June 5, 1975. *Cf. United*

States v. *Haley*, *supra*. On remand, after the United States Attorney General entered his unchallenged objection under Section 5 of the Voting Rights Act of 1965 to the Legislature's plan, the District Court was obliged to order into effect a court-ordered plan. At this point, the question of whether multi-member districts should be struck down for dilution of Black voting strength does not even arise, since any court-ordered plans must in any event meet the *Chapman* v. *Meier* single-member district standards, specifically cited in this Court's June 5, 1975 decree.

Thus, for example, in *East Carroll Parish School Bd.* v. *Marshall*, 44 U.S.L.W. 4320 (No. 73-861) (U.S. March 8, 1976), involving a racial discrimination challenge to at-large parish elections, this Court indicated that the Court of Appeals need not even have reached the constitutional question of dilution of Black voting strength in reversing the District Court's approval of the at-large scheme:

> "We have frequently reaffirmed the rule that when United States district courts are put to the task of fashioning reapportionment plans to supplant concededly invalid state legislation, single-member districts are to be preferred absent unusual circumstances. *Chapman* v. *Meier*, 420 U.S. 1, 17-19 (1975); *Mahan* v. *Howell*, 410 U.S. 315, 333 (1973); *Connor* v. *Williams*, 404 U.S. 549, 551 (1972); *Connor* v. *Johnson*, *supra*, at 692." 44 U.S.L.W. at 4321.[3]

Thus, the reason given by the District Court for its stay of proceedings in this case—to receive "some badly needed guidance" from this Court on the issue of "impermissible dilution and minimization of the black vote" (Petition, App. A, p. 1a)—fails to justify any further delay in the effectuation of petitioners' rights since, in

[3] The *East Carroll Parish* case was one of the three pending cases cited by the respondent judges in support of the January 29 stay order (Pet., App. A, p. 2a).

the present posture of the case, the District Court need not even reach this issue. Single-member districts are required in this court-ordered plan "absent unusual circumstances." And this Court has already so instructed the District Court, most recently on June 5, 1975 in *Connor* v. *Waller*.

The citation by this Court in *East Carroll Parish* to its prior decisions in *this case* emphasizes that the principles governing the implementation of a permanent court-ordered plan for Mississippi have already been established *in this case*, and no further delay is necessary. For this reason, the January 29 stay order lies beyond the discretionary power of the District Court to stay proceedings pending the outcome of cases in this Court, since issues presented in those pending cases are *not* germane to the present disposition of this case in its present posture.

B. Respondent state officials also attempt to rely on a reason not stated by the District Court in its January 29 stay order by suggesting that reapportionment legislation is pending in the Mississippi Legislature (Brief, pp. 9-10). We agree that any constitutionally acceptable legislative plan properly and timely pre-cleared under Section 5 might succeed any court-ordered plan, but the District Court judges do not assign this as a reason for delay action. Since 1962 the Mississippi Legislature has failed to enact a plan which meets constitutional standards or Section 5 approval. The deadlines for committee action (March 11) and original floor action for bills originating in each house (March 18) during the 1975 Regular Session of the Mississippi Legislature (except for private legislation and revenue bills) have now passed, and no state legislative reapportionment legislation has been reported out. All pending legislative reapportionment bills have died in committee, and cannot be resurrected except by a suspension of the rules which requires a two-thirds vote.

The Legislature already has been given a more than adequate opportunity to act, and the District Court's duty was and has been "to grant relief under equitable principles to insure that no further elections are held under an unconstitutional scheme." *Davis* v. *Mann*, 377 U.S. 678, 693 (1964).

C. The possibility of legislative action *is* advanced by the District Court (Response, p. 4) to justify its failure to take any action in this case from January, 1972 to February, 1975, even after this Court had directed in *Connor* v. *Williams*, *supra*, that proceedings to establish single-member districts "should go forward and be promptly concluded" (404 U.S. at 551) and had remanded this case for "a final judgment with respect to the entire State" (*id.* at 551-52). By its January 29, 1976 stay order, the District Court has unquestionably failed in its responsibility and must now be required promptly to afford plaintiffs an adequate remedy for the continued denial of their voting rights.

4. This Court Should Issue the Writ of Mandamus to Compel Compliance with its Prior Mandates.

None of the respondents seriously contend in their briefs that the temporary plan ordered by the District Court for the 1975 legislative elections complies with the mandate of this Court in *Connor* v. *Waller*, 421 U.S. 656 (1975), or satisfies the standards for court-ordered plans established by this Court in *Chapman* v. *Meier*, 420 U.S. 1 (1975). Indeed, any court-ordered plan in which 51 of the 84 House districts are multi-member districts, electing 72.95 percent of the House membership, and in which 15 of the 39 Senate districts are multi-member districts, electing 53.85 percent of the Senate membership,[4] and which is malapportioned by total de-

[4] The Mississippi Attorney General in his Brief (p. 13) disputes these statistics by asserting that there are only 28 multi-member House districts and 12 multi-member Senate districts, but includes in his computation of single-member districts the floterial districts established by the order of July 11, 1975. But floterial districts are a "special variety of multi-member districting" (Robert G. Dixon, Jr., DEMOCRATIC REPRESENTATION 461 (1968) in which one or more legislators are elected from subdistricts (here, counties), and others are elected at-large (here, groups of counties). A considerable degree of sophistry is required, for example, to assert that where one Representative is elected from Alcorn County, one Representative is elected from Benton and Tippah Counties together, and a third Representative is elected from Alcorn, Benton, and Tippah together, that three single-member districts are thereby created (Petition, App. F., p. 48a). But the point to be made here is that even if the State's twisted arithmetic is accepted, further relief is compelled by the decisions of this Court.

viations of 62.963 percent and 20.292 percent for the floterial districts, and 19.729 percent and 18.902 percent (House and Senate, respectively) in the nonfloterial districts, is patently violative of this Court's June 5, 1975 mandate and of the requirements established in the decisions there cited. *See also East Carroll Parish School Bd.* v. *Marshall*, *supra*.

The respondent judges do not even attempt the argument that their temporary 1975 plan complies with this Court's mandate (Brief of Respondent-Defendants, pp. 5, 13), but admits as they must (p. 13) the continued existence since 1971 of a large number of multi-member districts.

Thus, the fundamental question presented by the Petition is whether this Court's orders to the District Court should be implemented now as petitioners implore, or whether implementation should be delayed at least until 1977 as the respondent judges suggest (Response, p. 2) or until 1979 as the defendant state officials contend (Brief, p. 2).

In the 1972 decision in this case, *Connor* v. *Williams*, *supra*, this Court indicated that further delay was not to be tolerated when it ordered that proceedings for the

development of single-member districts in the most populous counties "should go forward and be promptly concluded" (404 U.S. at 551) and remanded this case back to the District Court for "a final judgment with respect to the entire State" (*id.* at 551-52). Now, four years later, there is still no "final judgment with respect to the entire State" and the District Court, by staying further proceedings and decision, continues to engage in the tactics of delay.[5]

Significantly, neither the respondent judges nor the defendant state officials advance the argument that even with the January 29 stay order, a permanent plan can be approved this year and remedial special elections held in conjunction with the November, 1976 presidential election as contemplated by the District Court's order of August 1, 1975. The District Court judges contend that "no emergency exists" (Response, p. 2) and the defendant state officials argue that nothing should happen until 1979 (Brief, p. 2). These assertions serve to underline petitioners' contention that the purpose and effect of the January 29 stay order is to discard entirely the timetable for implementation established on August 1, 1975 (Petition, App. C. pp. 4a-5a) by the District

[5] The District Judges in their response erroneously assert that the present litigation is only ten months old, because on April 10, 1975, all prior proceedings were dismissed as moot, and plaintiffs were ordered to file an amended complaint (Response, pp. 5-6) (*see* Pet., App. G, p. 80a, Judgment entered April 11, 1975). However, the respondent judges fail to inform the Court that on June 20, 1975, they entered an order rescinding and vacating the Judgment of April 10, 1975, and reinstated all prior proceedings in this case. Order Vacating Judgment entered June 20, 1975 (Pet., App. G, p. 84a). (The only apparent purpose of this June 20 order was to permit the District Court to reach back and reinstate the 1971 court-ordered plan for the 1975 legislative elections.) More importantly, no procedural gambit by the District Court should disguise the fact that this litigation to secure these plaintiffs' voting rights has been "running for ten years with numerous decisions" (January 29, 1976 stay order, Petition, App. A, p. 1a) without a lawful and final resolution.

Court itself, and to delay until some future unspecified time compliance with the prior mandates of this Court.

If the District Court's January 29 stay order is not vacated, and the District Court directed to proceed to a final judgment without further delay, petitioners and the class which they represent will continue to suffer the most grevious irreparable injury by reason of the continued violation of their voting rights (already three times declared by this Court), their continued virtual exclusion from any free and meaningful participation in the legislative election process, and the continued perpetuation in office of concededly unlawfully elected legislators who, therefore, do not represent the interests of their constituents.[6]

[6] *See, e.g.*, Jurisdictional Statement, *Connor* v. *Waller*, *supra*, App. E, pp. 1e-4e.

CONCLUSION

The relief requested in the Petition should be granted: either the respondent judges should be ordered to render a final judgment to permit necessary special elections in conjunction with the 1976 presidential election, or the Chief Judge of the Court of Appeals should be directed to convene a new three-judge panel to carry out this Court's prior mandates.

FRANK R. PARKER
HERMAN WILSON
Lawyers' Committee for Civil
Rights Under Law
233 North Farish Street
Jackson, Mississippi 39201

PAUL R. DIMOND
WILLIAM E. CALDWELL
Lawyers' Committee for Civil
Rights Under Law
733 Fifteenth Street, N.W.
Washington, D.C. 20005

Attorneys for Petitioners

APPENDIX A

District Court Order of June 25, 1975

APPENDIX A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action Number 3830

[Filed June 25, 1975, Southern District of Mississippi, Robert C. Thomas, Clerk, By ————, Deputy]

PEGGY J. CONNOR, ET AL.,
Plaintiffs,

v.

WILLIAM L. WALLER, GOVERNOR, ET AL.,
Defendants.

ORDER

Pursuant to the remand of this case by the Supreme Court of the United States on June 9, 1975, this Court held a hearing in Jackson, Mississippi on June 20, 1975, at which the parties, represented by counsel, presented oral argument lasting the entire day. No further evidence was adduced; the parties expressly stipulating in open court that they preferred to stand on the evidentiary record as heretofore developed.

At said hearing, the original plaintiffs and the Department of Justice objected to the composition of certain legislative districts on the ground that they cancel or minimize black voting strength as follows:

A. Objected to by the original plaintiffs:

House Districts numbered 3, 9, 23, 24, 28, 30 and 37;

Senate Districts numbered 1, 8, 16, 18, 19, 24 and 27.

B. Objected to by the Department of Justice:

House Districts numbered 3, 9, 13, 14, 15, 17, 23, 24, 28, 29, 30, 31, 32, 33, 34, 37, 39 and 40.

Senate Districts numbered 1, 6, 8, 14, 15, 18, 19, 22, 24 and 25.

The legal and factual reasons for the asserted unconstitutional dilution of black voting strength in many of the legislative districts are so unclear as to leave the Court with no adequate basis for findings in this regard. This is especially true of the objections asserted by the Department of Justice. Some districts with black population majorities have been objected to, while others in the same category have not been challenged.

Therefore, the Department of Justice is requested, as soon as reasonably possible, to file memoranda with the Court specifically setting forth, *district by district*, the facts of record or of which this Court may take judicial notice, demonstrating the unconstitutional dilution of black voting strength as heretofore asserted by the Department of Justice. The original plaintiffs may file similar memoranda as to the districts to which they have objected, if they so desire.

This Court proposes, where necessary, to alter any legislative district so as to remedy any existing unconstitutional dilution of black voting strength, but more information is required for a judicial determination that the need exists, especially as to a number of districts named by the Department of Justice.

We request particular attention to those districts presently having a black majority population, since not all black population majority districts were objected to.

The requested memoranda need not be addressed to Hinds, Harrison and Jackson Counties as this Court is under a prior mandate from the Supreme Court of the United States concerning legislative districts in these counties.

The parties are hereby formally advised that the Court proposes to formulate a temporary plan for the election of Senators and Representatives for the 1975 election ONLY, the first primary being scheduled by law for August 5, 1975.

We find as a fact that a permanent plan for the reapportionment of legislative districts cannot now be formulated because there is not enough time between now and the August primaries to accomplish the necessary reregistration of voters, personally or administratively, nor to geographically realign voting precincts, Mississippi being a permanent registration states in which precinct boundaries (over 2,000 in the state) are fixed by local Boards of Supervisors so as to fit within the boundaries of the five Supervisors Districts in each county (52 counties having been reapportioned under the one person —one vote rule since the census of 1970).

By the entry of this order, the parties are judicially informed that this Court proposes without unnecessary delay to formulate a permanent plan for the election of legislators in the quadrennial elections of 1979. When that shall have been accomplished, special elections may be ordered in those legislative districts where required by law, equity, or the Constitution of the United States.

The parties are likewise hereby informed that as to legislative districts altered by the temporary plan for 1975, an adequate period of time will be allowed for the qualification of candidates in the altered districts; however, those already qualified will remain so for the area in which they reside. If necessary, the printing of special ballots for the legislature in the altered districts will be ordered.

The scheduled elections for members of the legislature in 1975 will not be postponed.

Redistricting Jackson County:

The parties are informed that the Court presently intends in the temporary plan to comply with the mandate of the Supreme Court as to single member districts in Jackson County by taking the following action:

District 46

Jackson County, one Representative to be elected from each of the five Supervisors Districts.

District 42	Population
Perry County	9,065
Greene County:	
Beats 1, 2, 3 and 5	6,836
Total	15,891

12.6% off the statewide norm.

District 47	
George County	12,459
Beat 4 of Greene County	1,709
Beat 5 of Stone County	1,620
Total	15,788

12.6% off the norm.

This will leave *District 43* as follows:

Pearl River County	27,802
Stone County:	
Beats 1, 2, 3, and 4	6,480
Total	34,282

17,141 population per House Member
5.7% off the norm.

The Court is of the opinion that this plan is far preferable to creating a single member District of George County alone, which would be 31% off the norm.

The parties are requested to state their objections, if any, to this proposal.

The Court realizes that the above plan geographically fractures Greene and Perry Counties and that this violates the well defined, ancient public policy of the state of Mississippi of preserving the integrity of its county boundaries. We do it in this instance because there appears to be no other way to conform to the Supreme Court mandate. This is temporary only, for the 1975 elections, and is not to serve as a precedent in any other situation, although such fracturing may be unavoidably necessary in certain other instances to comply with the Fifteenth Amendment and will, where required, be done for that reason.

Redistricting Harrison County

The parties are further advised that because of the absence of any viable alternative, the Court intends to conform as nearly as possible to the Supreme Court mandate as to Harrison County by directing that one Representative shall be elected from each of the five Supervisors Districts and two from the county at large, subject to the possibilities of special election if later, in the course of this litigation, this should be legally mandated.

The three Senators will be elected from Harrison County at large, it being now impossible, for lack of population statistics, to erect three Senatorial Districts of substantially equal size within the county.

If the parties have any valid objections to this temporary measure, they are requested to state them.

Redistricting Hinds County

The parties are informed that the specific method by which Hinds County is to be divided into single member districts as ordered by the Supreme Court is receiving

the continuing consideration of the Court, which has come to no resolution thereon, except that as a temporary measure, the five Hinds County Senators will be chosen from single member districts, one from each of the five Supervisor's Districts in the county as recently reapportioned by the United States District Court. Candidates for said seats from said districts shall have until 5 o'clock p.m., C.S.T., Monday, July 7, 1975, in which to qualify as candidates. Those already qualified will remain candidates from the district in which they legally reside as of 5 o'clock p.m., C.S.T., Monday, July 7, 1975.

SO ORDERED by the unanimous direction of the Court, this June 25, 1975.

/s/ Harold Cox

United States District Judge

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1184

PEGGY J. CONNOR, et al.,
Petitioners,

vs.

J. P. COLEMAN, UNITED STATES CIRCUIT JUDGE, et al.,
Respondents.

ON MOTION FOR LEAVE TO FILE AND ON PETITION FOR A WRIT OF MANDAMUS

REPLY BRIEF FOR THE RESPONDENT-DEFENDANTS

A. F. SUMMER
Attorney General of Mississippi
GILES W. BRYANT
Special Assistant Attorney General
WILLIAM A. ALLAIN
Special Counsel
Post Office Box 220
Jackson, Mississippi 39205

E. L. Mendenhall, Inc., 926 Cherry St., Kansas City, Mo. 64106, 816-421-3030

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REPLY BRIEF FOR THE RESPONDENT-DEFENDANTS

This brief is submitted by the Defendant State Officials in reply to the Brief for the United States filed in response to petitioners' Motion for Leave to File Petition for Writ of Mandamus and received by said officials on May 10, 1976.

SUMMARY OF RESPONSE

The United States has now joined with petitioners in their request to have this Court compel or otherwise instruct the District Court not to await the decision by this Court in *United Jewish Organizations of Williamsburgh, Inc.* v. *Carey*, No. 75-104, certiorari granted November 11, 1975 (hereinafter "*Williamsburgh*") before proceeding with the formulation and implemen-

tation of a permanent reapportionment plan to replace the court-ordered plan of 1975.

A. The United States Is Unable to Articulate Any Injury to Petitioners, Who Were Afforded Representation Reasonably Equivalent to Their Political Strength.

The legislative districts established by the District Court for the 1975 legislative elections which were held thereunder, afforded black citizens of the State of Mississippi representation reasonably equivalent to their political strength.[1] However, the District Court in formulating the plan did not gerrymander the legislative districts to *maximize* black voting strength wherever it could be found. The District Court was under this Court's mandate in *Connor* v. *Waller*, 421 U.S. 656 (1975) to require the conduct of the legislative elections for 1975 under a court-ordered plan that complied with this Court's decisions in *Mahan* v. *Howell*, 410 U.S. 315 (1973); *Connor* v. *Williams*, 404 U.S. 549 (1972); and *Chapman* v. *Meier*, 420 U.S. 1 (1975). In complying with the mandate, the District Court, in the face of imminent elections, formulated and implemented a reapportionment plan for the 1975 legislative elections only. There is no question that a permanent reapportionment plan for the 1979 legislative elections will be formulated by the District Court, absent or subject to approved legislative action. Further, the District Court has announced that, where required, special elections will be held. There is no injury.

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1. Under the 1975 court-ordered plan (Pet.App.46a), 62% of the members of the Mississippi House of Representatives and 51.9% of the members of the Mississippi Senate were elected from districts having a black population of 36% or more—the equivalent black population percentage of the state.

B. The Questions in United Jewish Organizations of Williamsburgh, Inc. v. Carey, No. 75-104 on Which Certiorari Was Granted Directly Relate to the Relief of Maximization of Minority Voting Strength Requested by Petitioners.

In the formulation of a permanent reapportionment plan, the United States and the private plaintiffs seek to have the District Court create, with the central objective of maximizing black voting strength wherever found, as many districts as possible with black population majorities of at least between 54% and 65% of the district population.[2] On November 11, 1975, this Court granted certiorari in *Williamsburgh*. Contrary to assertion of the United States (Brief, pp. 14-15), *Williamsburgh* has direct application to the case sub judice, for it likewise concerns the drawing of district lines, with a central and governing premise that a certain number of districts must have a predetermined nonwhite majority in order to ensure nonwhite control in these districts. See *United Jewish Organizations of Williamsburgh, Inc.* v. *Wilson*, 510 F.2d 512, 517-518, 526 (C.A.2).

The decisions of this Court in *East Carroll Parish School Board* v. *Marshall*, No. 73-861 (March 8, 1976)[3] and *Beer* v. *United States*, No. 73-1869 (March 30,

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2. Plaintiffs' expert testimony was that a black population majority "somewhere between 54% and 65%" was necessary for a district to have a realistic probability of electing black candidates. (Transcript of Hearing, May 7, 1975; pp. 173-174 and 195—Dr. Gordon G. Henderson).

3. In *East Carroll Parish School Board* v. *Marshall*, No. 73-861, certiorari granted, 422 U.S. 1055, this Court affirmed the judgment below but expressly "without approval of the constitutional views expressed by the Court of Appeals," i.e., that multimember districts were unconstitutional unless their use would afford a minority greater opportunity for political participation, or unless the use of singlemember districts would infringe protected rights.

1976)[4] have provided the District Court with guidance toward the resolution of the alleged claims of racial dilution and the request for remedial relief. However, it is the striking similarity of *Williamsburgh* to the District Court's task that warrants the temporary delay ordered by the District Court.

ARGUMENT

The District Court Should Have the Benefit of the Decision of This Court in Williamsburgh Before Entering a Final Reapportionment Plan and Ordering Any Necessary Special Elections.

In *United Jewish Organizations of Williamsburgh, Inc.* v. *Carey*, No. 75-104 (hereinafter "*Williamsburgh*"), certiorari was granted to review the decision of the United States Court of Appeals for the Second Circuit on the question of whether the Fourteenth and Fifteenth Amendments of the United States Constitution were violated by an alleged deliberate racial gerrymander under which election lines were drawn on the basis of a racial standard to secure a certain number of districts with substantial nonwhite majorities in order to ensure nonwhite control in those districts. In granting certiorari in *Williamsburgh*, at least four Justices of this Court determined that there were special and important reasons for the Court to decide the questions presented. The assertion by the United States (Brief, p. 19) that there is a "lack of any reason to believe that the decision in *Williamsburgh* will provide meaningful guidance here" misperceives the measurement of this Court's decision to grant certiorari in such cases.[5]

4. In *Beer* v. *United States*, No. 73-1869, probable jurisdiction noted, 419 U.S. 822, this Court rejected the Government's Section 5 definition of "dilution of minority voting strength," finding that same was not to be measured by the maximum potential impact of the minority vote.

In *Williamsburgh*, the State of New York, in view of the population changes reflected in the 1970 census, altered the state legislative districts in January of 1972, including the Senate and Assembly lines for Kings County, New York. The population of Kings County is 64.9% white and 35.7% nonwhite, and the county is divided into 22 assembly districts and 10 senate districts. In 1974, to comply with the criteria of the Department of Justice that there be three (3) senate districts and two (2) assembly districts with "substantial nonwhite majorities," the State drew new lines for Kings County, which was one of three New York Counties subject to the preclearance requirements of Section 5 of the Voting Rights Act of 1965 (as amended), 42 U.S.C. §1973c.

In establishing the new district lines for the county, the New York state officials "got the feeling that a 65% nonwhite majority would be approved"[6] since the Department of Justice had indicated that the 61.5% nonwhite population in a certain assembly district under the 1972 plan was insufficient. Therefore, the State, by its 1974 plan[7] created five (5) assembly districts having over 75% nonwhite populations and two

5. Rule 19 of the Revised Rules of the Supreme Court of the United States indicates the character of the reasons which will be considered by this Court in granting certiorari.

6. *Williamsburgh*, 510 F.2d 512, 517, reported testimony of Richard S. Scholaro, Executive Director of the Joint Committee on Reapportionment.

7. Laws of New York (1974), Chs. 588, 589, 590, 591 and 597.

(2) assembly districts with over 65% nonwhite populations as well as three senate districts with substantial nonwhite population majorities.[8] As articulated in the dissent:

> "The case concerns the drawing of district lines with a central and governing premise that a set number of districts must have a predetermined nonwhite majority of 65% or more in order to ensure nonwhite control in those districts." *Williamsburgh*, 510 F.2d 512, 523.

We agree. The paramount question thus presented is whether a district court can approve the implementation of a plan fashioned with such a purpose to achieve a similar result.

The objective of the reapportionment plans proposed by the private plaintiffs[9] and the United States,[10] quite clearly, is to maximize black voting strength wherever it may be found but still not to waste it. In the Kirksey Plan, plaintiffs deliberately created twenty-six (26) house districts with black population majorities in excess of 57% to achieve a black voting-age majority in those districts, and, with the same

8. *Williamsburgh*, 510 F.2d 512, 518 and 523. Under the 1972 plan, six of the twenty-two assembly districts had over 60% nonwhite populations and one over 50%. The 1972 senate plan had only one district out of the ten senate districts of the county with a substantial nonwhite population majority.

9. The Valinsky and Kirksey plans were submitted to the District Court by plaintiffs as plaintiffs' Exhibits Nos. 19 and 20 and 33 and 34; and additionally, have been offered repeatedly as attachments or appendices to plaintiffs' pleadings.

10. The State Modified Plan drawn by the Department of Justice carves out twenty-nine house districts and eleven senate districts with black voting-age population majorities (Pet.App.15a).

purpose, carved out seven (7) senate districts with black population majorities exceeding 57.8%. Similar results are achieved by the private plaintiffs and the United States in all the reapportionment plans submitted to the Court. Without question, the relief that plaintiffs and the United States seek is the deliberate creation of legislative districts with substantial black population majorities, resulting in black voting-age population majorities with sufficient margin to assure nonwhite control in those districts. No harm to plaintiffs or the United States can result from awaiting this Court's decision in *Williamsburgh* on whether a district court can constitutionally fashion or approve a plan deliberately drawn on the basis of such a racial standard.

The United States argues (Brief, p. 14) that in balancing the equities:

> "[T]he irreparable injury the state's voters will suffer by further delay in the implementation of a lawfully adequate reapportionment plan far outweighs anything that might be gained by waiting for the decision in *Williamsburgh*."

The fallacy of the Government's argument here is at least twofold. First, no injury has been shown, especially where under the 1975 court-ordered plan fourteen (14) senators (26%) were elected from districts having black population majorities and thirty (30) representatives (25%) were elected from districts having black population majorities. Moreover, under the 1975 court-ordered plan an additional thirteen (13) senators and forty-six (46) representatives were elected from districts having black populations between 36%

and 50%.[11] Second, assuming arguendo that this Court does not reach the question in *Williamsburgh* involved here, if any special elections are required as a consequence of any changes made in the existing districts by the permanent reapportionment plan, then they can be conducted at such time. *Town of Sorrento* v. *Reine*, No. 75-93, decided April 26, 1976; *Hadnott* v. *Amos*, 394 U.S. 358; *Keller* v. *Gilliam*, 454 F.2d 55 (C.A.5); *Toney* v. *White*, 488 F.2d 310 (C.A.5) (en banc); *Hall* v. *Issaquena County*, 453 F.2d 404 (C.A.5); *Hamer* v. *Campbell*, 358 F.2d 215 (C.A.5), certiorari denied, 385 U.S. 851.

The United States attempts to explain its failure or reason for not appealing from the District Court's order establishing a reapportionment plan for the 1975 legislative elections on three grounds (Brief, p. 8): "the proximity of the August 12 primary elections, the district court's indication that it intended to take prompt action in formulation of a final plan and scheduling special elections, if necessary, and this Court's prior indication, in *Connor* v. *Williams*, supra, that it wished to rule only on a final plan. . . ."

The Government concedes, however, that the District Court declined to establish a deadline for approval of a final plan. Prior to the conduct of the 1975 elections, the United States and the private plaintiffs were clearly and frankly advised by the District Court that it could not impose a deadline on its own efforts.

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11. See District Court order of July 11, 1975 (Pet.App.46a) implementing the reapportionment plan for the 1975 elections. Additionally, seventy-six of the present house members and twenty-seven of the present senate members were elected from districts having a black population of 36% or more—the equivalent black population percentage of the state.

It is now quite apparent that prior to the 1975 legislative elections the United States and the private plaintiffs disapproved of the legislative districts as established by the District Court's order of July 11, 1975. Their disappointment with the results of the 1975 legislative elections has magnified their earlier disapproval, to the extent that now they seek appellate review of the 1975 plan by this extraordinary means. To seek summary review of the District Court's reapportionment plan implemented by its order of July 11, 1975, after they remained silent and took no action and watched the State of Mississippi three times call its citizens to the polls, flies squarely in the face of the equitable principles the United States seeks to invoke.

While the United States offers this Court (Brief, p. 19) a less rebuking solution to the alleged problem presented by petitioners, i.e., "denial of the writ with an explanation that the district court is expected to perform its duty forthwith. . . .", the result they seek is the same, for they urge that: "[e]ither by that means or by issuance of the writ, the district court should be instructed to proceed to a prompt decision and decree ordering special elections."

With the absence of any finding that plaintiffs have suffered injury as a result of the 1975 legislative elections and with the issue of maximization of minority voting strength clearly present here as in *Williamsburgh*, the result sought by the motion and petition for writ of mandamus is not warranted.

CONCLUSION

For the reasons stated, the Motion for Leave to File Petition for Writ of Mandamus should not be granted. The District Court should be allowed to defer

the formulation of a permanent reapportionment plan until this Court decides *United Jewish Organizations of Williamsburgh, Inc.* v. *Carey*, No. 75-104.

Respectfully submitted,

A. F. SUMMER
Attorney General
State of Mississippi

GILES W. BRYANT
Special Assistant Attorney General

WILLIAM A. ALLAIN
Special Counsel

By: A. F. SUMMER

CERTIFICATE

I, A. F. SUMMER, Attorney General of the State of Mississippi, do hereby certify that I have mailed this date by United States Mail a true copy of the foregoing Reply Brief for the Respondent-Defendants to the following:

Hon. Robert H. Bork
Solicitor General
United States Department of Justice
Washington, D. C. 20530

Hon. J. Stanley Pottinger
Assistant Attorney General
Hon. Gerald W. Jones
Assistant Attorney General
United States Department of Justice
Washington, D. C. 20530

Hon. Frank R. Parker
Lawyers Committee for Civil Rights Under Law
233 North Farish Street
Jackson, Mississippi 39201

THIS the 13th day of May, 1976.

A. F. SUMMER